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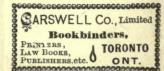
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The Hon. Mr. Justice Riddell.

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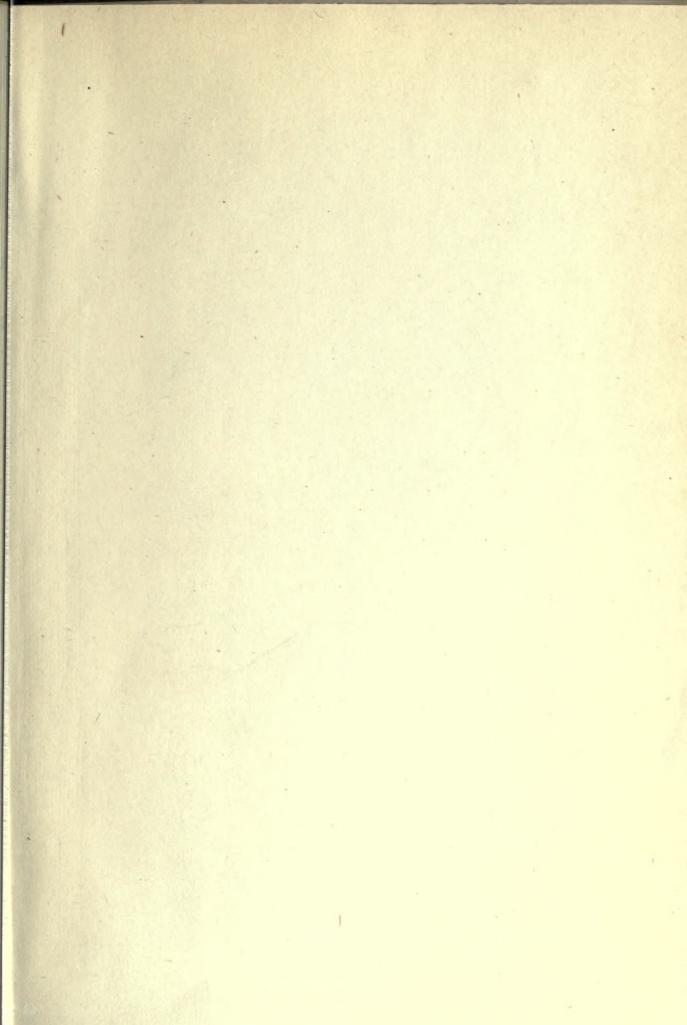
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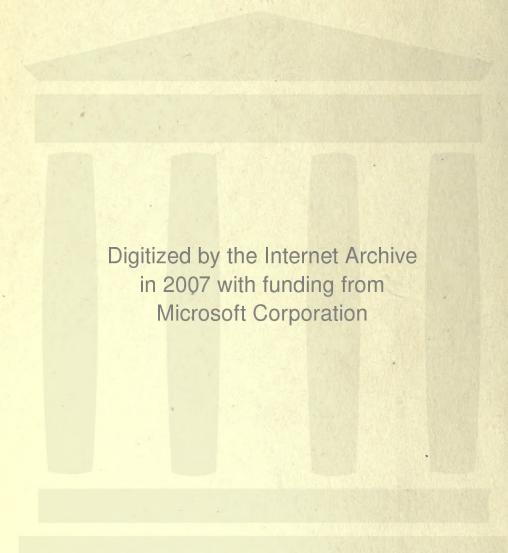
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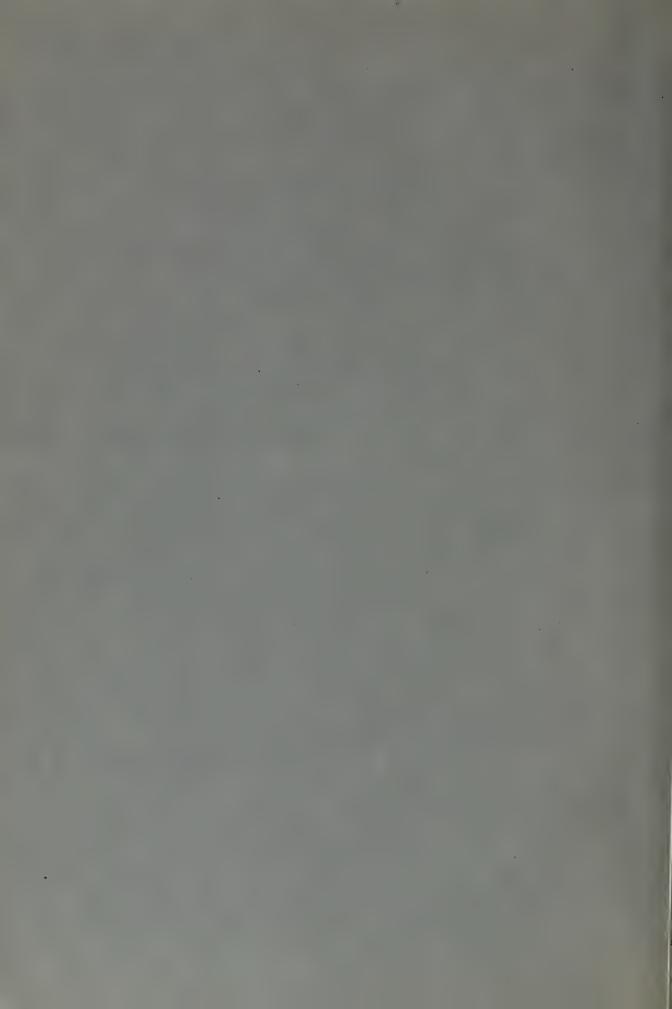
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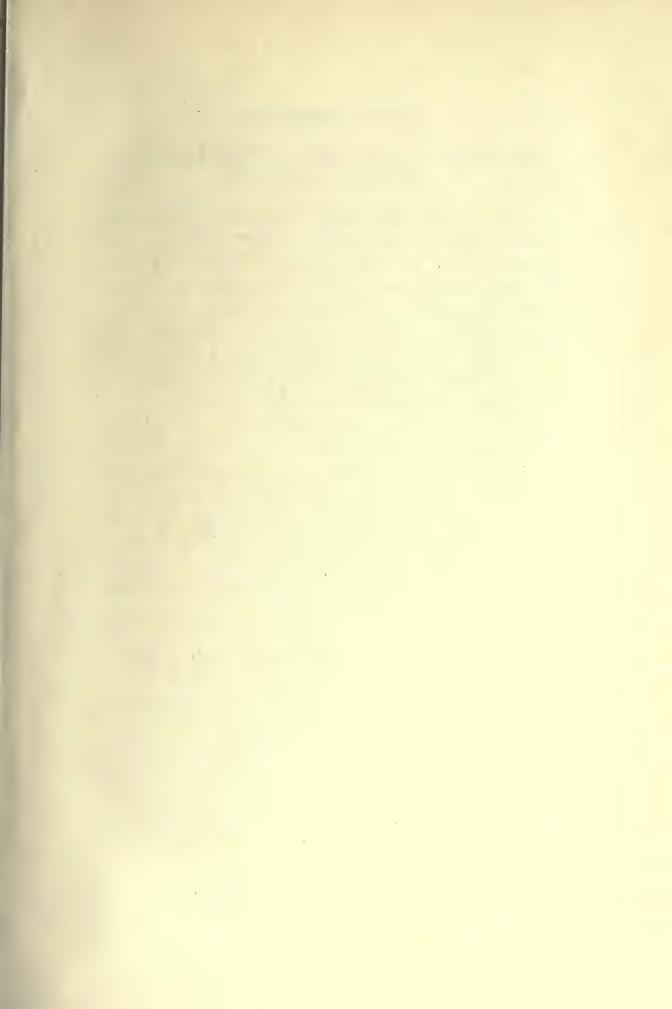




Address of Hon. Mr. Justice William Renwick Riddell

Reprinted from the Proceedings of the American Society for Judicial Settlement of . International Disputes, 1913





ADDRESS OF HON. MR. JUSTICE WILLIAM RENWICK RIDDELL

On this, my second visit to Washington at a meeting of this Society, I feel myself to be here rather in a dual capacity. One of these capacities I filled the other evening when I unloaded on a long-suffering audience "collections and recollections" concerning the arbitrations between the United States, on the one hand, and Great Britain (including Canada) on the other. That was assisting, in some degree, I hope the objects for which this Society was organized and is being carried on.

The other and more pleasant function which I have to perform, I propose to perform in my weak way this evening. That is, to bring to you the good wishes and greetings of your kindred Commonwealth to the north.

My friends here from lands large or small, as the case may be, will not understand me as intending to depreciate or belittle their countries, of which they are so justly proud, when I devote my attention to a great extent to your country and to mine.

I do not feel myself a foreigner in the United States. After the closing of my court in Osgoode Hall, in Toronto, I can take a train and be, in the morning, in another Canadian city; and, being a lawyer—because although I am a judge I have not ceased to be a lawyer; I am not like the other judge who, when he received Her Majesty's patent appointing him to the bench, at once proceeded to sell his library and buy a new gun—being still a lawyer, like all lawyers on a holiday I go to the court as actors on a holiday go to the theatre. I see

the Union Jack, under which I was born, and under which I have lived the greater part of my life, floating over the court room in the same way it does over Osgoode Hall in Toronto. I see the judge garbed as I am garbed when I am sitting on the bench. I see the King's Counsel and the other lawyers before the court. Apparently everything is precisely the same as it is in my court; but wait a moment. Someone begins to speak. The language is not the language which I learned at my mother's knee, but another language, as ancient, if you like, more euphonious, if you please, but it is not the English language. And the law however scientific and philosophical is not based on the Common Law of England.

But suppose I go the other way. I go west a short distance, and perhaps then south into New York State or into Michigan. I go into a court room over which floats another flag, different from mine indeed, but a flag with which I have been familiar all my life, because I was born and brought up on the shore of Lake Ontario; and our American friends visit us frequently—and they never allow us to forget the Stars and Stripes is their flag. It is a flag with which I have been familiar all my life and which I look upon as next to my own. I enter a court room and I see a judge on the bench, wearing a different garb, it is true, from that I wear. I see no King's Counsel, but I see lawyers there. Sometimes a lawyer has on a black coat, sometimes he has not. But I listen and I hear familiar accents. I hear the common law of England, the same principles of decision, the very same maxims which we use. I hear what the lawyers fondly believe to be Latin, pronounced in the same way

as Latin is pronounced in my country—if I hear Latin pronounced in a certain way, I know I am in the company of common law lawyers, and that I am certainly not in the company of classical scholars—the Latin is pronounced precisely the same way as it is pronounced in my court, in Osgoode Hall; and I feel myself absolutely at home. No Canadian can ever be a foreigner in a land in which the English common law is the basis of decision and the English language is the language of the people.

Your people and ours are practically and essentially one—one in origin, one in language; language spoken perhaps with slightly different intonation, but there is no more difference between the intonation of Washington and Ottawa than there is between the intonation of Ottawa and Vancouver and Victoria; we Canadians have the American pronunciation, largely. We read the same masters, and have the same sentiments—both say:

We must be free or die, who speak the tongue That Shakespeare spake; the faith and morals hold Which Milton held.

We are all one people: even when we deplore that difference which divided us a hundred years ago, that division is as nothing compared with the centuries of glorious history, the centuries of glorious literature, which we have in common. That division in the past is merely skin deep, as compared with our essential and fundamental identity and unity.

The solidarity of the English speaking races is growing. It is based not only on identity of origin and identity of language, but on identity of institutions.

You call yourselves a republic, and you at all times have a monarch even if his rule is not for life. We call ourselves a monarchy, while we are really a republic. But after all, in both nations the majority get their own way ultimately, one way or the other.

Our institutions are practically the same. Our views of justice and right, of jurisprudence and honesty, are practically the same; and these, after all, are what make men one, what make men feel themselves the same people.

Of course there are those in the United States and in Canada who are of different lineage and of different language but I am here to speak to Americans, English speaking Americans, as a Canadian, an English speaking Canadian. That sympathy, that solidarity between us has been helped by the hundred years of peace through which we have lived. Let no man persuade you that the War of 1812 has had anything to do with building up the respect and feeling of kindliness and familiarity, the fraternity between the two peoples. I know whereof I speak; I know Canadian people, I venture to think, as well as most and I am thoroughly convinced that no small part of the ill feeling which exists on my side of the line is due to that war directly or indirectly. Thank God it is confined to a comparatively insignificant number. Still, there is ill feeling. You will find people on my side of the line who are just as anxious to take a shot at the American eagle as some men on your side of the line are to twist the lion's tail. They are in general practically negligible there; but you can hear them now and then.

They remind me of the farmer who made a contract

to supply a restaurant keeper with four carloads of frogs. He ultimately brought in two pails full and said those were all he could catch. "But," said the restaurant keeper, "you promised to bring me four carloads." "Well," he said, "I thought there were that many down in the swamp, they made such a racket."

These people—fools they may be called but they are worse than fools. They are traitors to their country. The man or woman who tries to stir up ill feeling and strife between the three branches of the English people is a traitor to his race, I care not whether he lives on this side of the international boundary or the other. That international harmony between us is going to have no small effect upon the peace of the world. God knows something is needed to assist in bringing about the peace of the world. Dr. Hill has spoken not too strongly about the difficulties in the way. There have been those who were working and bearing the burden and heat of the day for years and years and years, looking forward to the advent of peace throughout the world; and to them it seems very little nearer than it was before.

Peace is never popular. There was an election fought in the United States over "54-40 or fight," and the gentleman who had that on his banners succeeded in being elected President of the United States. There never was yet an election fought on a treaty of peace or arbitration treaty. Peace is not popular. Peace has no prancing steeds, no waving banners, no glittering swords, no shining helmets, no stirring tunes. Peace is as gray and drab as her own dove.

War is historic. War is picturesque. War appeals to sentiment. War appeals to taste. War appeals to feeling. War appeals to the lowest, most fundamental elements of human nature.

War I abhor;
And yet, how sweet
The sound along the marching street
Of drum and fife, and I forget
Wet eyes of widows and forget
Broken old mothers and the whole
Dark butchery, without a soul.

Without a soul save this bright drink
Of heady music sweet as hell
And even my peace abiding feet
Go marching down the marching street.
For yonder, yonder goes the fife
And what care I for human life?
The tears fill my astonished eyes,
And my full heart is like to break,
And yet 'tis all embannered lies,—
A dream these little drummers make.

Oh, it is wickedness to clothe
Yon hideous, grinning thing that stalks
Hidden in music, like a queen
That in the garden of glory walks,
Till good men love the thing they loathe.
Art, thou hast many infamies,
But not an infamy like this.

Art, painting, music, poetry, all dignify and glorify war. When did they, except perchance in some droning oratorio, speak of peace?

And yet the leaven is working. A Presbyterian professor of theology not very long ago said to me, "Mr. Justice Riddell, I am thoroughly in accord with you in your views concerning peace; but what good are you doing? How much further on are you than when you started?" I said, "My dear friend, Christ died for sinners many, many years ago. How much further on was the Christian religion fifty years after He died than it was when He died?"

You cannot make omelettes without breaking eggs, to start off with. You cannot do great things in a hurry. Everything great that is done is done slowly, quietly, peacefully. But it is working.

Say not the struggle naught availeth,
The labor and the wounds are vain,
The enemy faints not nor faileth
And as things have been they remain.

If hopes are dupes, fears may be liars.
It may be in you smoke concealed
Your comrades chase, e'en now, the fliers,
And but for you possess the field.

And though the tired waves vainly breaking Seem here no painful inch to gain, Far back, through creeks and inlets making Comes, silent, flooding in, the main

And not through eastward windows only
When daylight comes, comes in the light;
In front the sun climbs slow, how slowly,
But westward lo, the land is bright.

It is working. The leaven is working. The measure of meal is being moved. People are thinking; and once people think, there is an end of war.

Our people, my people and yours, as I have said, come from the same stock. More than a hundred years ago, when your Revolution became successful, there were hundreds and thousands of splendid Americans who came into my country, Ontario, Upper Canada, and founded Upper Canada. Not as poor suppliants came they into our Canadian wilds, but with head erect, and fearless eve. victorious in defeat, keeping their faith to their king. the old Cavalier in the revolution a hundred years before kept the faith, so these Cavaliers in the new revolution kept their faith, and came into Canada as British subjects. They brought with them the American conception of liberty, which was the same liberty which their ancestors had brought with them from the motherland. Your conception of liberty and ours is the same. Your and my ancestors determined that they would govern themselves. That is part of the genius of the English speaking people, it is part of their conception of the fitness of things—they insist that they will govern themselves, whether for right or for wrong.

I have always said that when the farmers drew themselves up on Bunker Hill, they fought not for the Thirteen Colonies alone but for Canada and Australia and South Africa and New Zealand, aye, for England herself, for all of England that is worth calling England, and for all that made the British Empire worth while. Your people and mine in Canada have been one; your people are one with the people just across the Atlantic, a few days sail. Just as your people and mine are one, so the English people and you and we all constitute one. We understand each other.

It is perfectly impossible to make a non-English speaking individual understand an English speaking people. I suppose it is equally impossible for us to understand the French or the Spanish or the German speaking people; but we understand each other. There is a feeling among us that we do understand each other, that we are all one, and we each know what the other will do.

In a town in the south of France there is a beautiful sitting monument under which are written the words "Sollicita sed non turbata."

"Sollicita sed non turbata"—anxious but not troubled. Each branch of the English speaking people looks at the other, watching with interest what the other will do, but not troubled as to what it will ultimately do.

We have heard something at this meeting about the Panama Canal. I am not going to say one word about the rights or the wrongs of the Panama Canal matter. The American people are guardians of their own honor. They will hear no word from me as to what they ought to do or ought not to do; but this must be noticed that the English people on the one hand and the Canadian people on the other hand, with a few negligible exceptions, have been perfectly calm about the matter, being quite certain that in the long run the American people will do that which is right. We are solicitous as to what they will do, but not troubled about the ultimate result.

So in Mexico. The dealing with Mexico by President Wilson has not been without interest to other nations of

the world. They have been solicitous. Britain has been solicitous. Canada has been solicitous. There are millions of Canadian capital in Mexico today. I know we are said to be a poor people, but we can invest in Mexico. There has been no word of interference with what Mr. Wilson would do. Nobody knew what he would do except himself, and perhaps he did not know at all events he did not tell anybody. But while nobody knew what he was going to do, Britain and Canada were perfectly confident, perfectly satisfied—solicitous, anxious, as to what you will do, but not "turbatae," feeling that you will do that which is right. It was the same way the other day when the British men-of-war were ordered to Mexico. The American people were not in the slightest degree troubled. Notwithstanding what some newspapers on this side of the Atlantic and some on the other side have said as to what the intention of Britain was, the American people had no fear whatever that there was going to be any interference on the part of Great Britain with what the American President saw fit to do. The American people were not entirely indifferent—Britain still has a fleet—they were solicitous, if you will, "sed non turbata."

The peoples understand each other. They know that ultimately each branch of the people will do that which is essentially just. Whether the Panama matter is to be settled in the way referred to by our friend Dr. Hannis Taylor last evening, I do not know. Frankly, I do not care. It is not a matter of any very great importance one way or the other. What is of importance is that the American people shall do that which is right—that they

shall do that which is right in the eye of the world, and particularly in the eye of their brethren across the sea and to the North.

I have always thought that these two nations are bound to stand side by side more than they have done even in the past. Must they not? Who is to do God's work? Who is to take up the white man's burden? No word shall come from me against that magnificent German nation from whom we have derived in Canada no small part of our strength. They are magnificent men in a magnificent nation; but Germany is looking always to the southwestern frontier.

France has been more than once the leader in civilization. France has all she can do to look after herself. She is looking to her northeastern frontier.

We know how Austria is divided. Russia has her own serf problem. Italy is not yet orientated after a war with Turkey. Can small nations help us, anxious as they are, splendid nations as they are, whether in South America, Central America or elsewhere?

The cry of the slave, the cry of the oppressed goes up to the throne of God every day; the tears of the afflicted water His footstool every hour. Who then, my friends, will still the one and wipe away the other, if these two nations do not join hand and hand and do God's work? They are the only nations which can do it. They are the nations which, please God, must do it.

I ask for no treaty. I ask for no formal union. There is that which is stronger than any parchment bond. There is that which is more lasting than words written by pen of gold or steel. It is the moral law; and

the law which proceeds from the throne of God, and more certain than the path of the planets around the sun, is that strong moral law which says that nations derived from the same source, speaking the same language, worshipping the same God under the same form, glorying in their centuries of splendid history in common, shall stand and march and, if need be, fight side by side for justice and truth and righteousness. It is to that union that I apply the words of your household poet:

Sail on, O Union, strong and great! Humanity, with all its fears, With all the hopes of future years, Is hanging breathless on thy fate!

Sail on, nor fear to breast the sea!

Our hearts, our hopes, are all with thee,

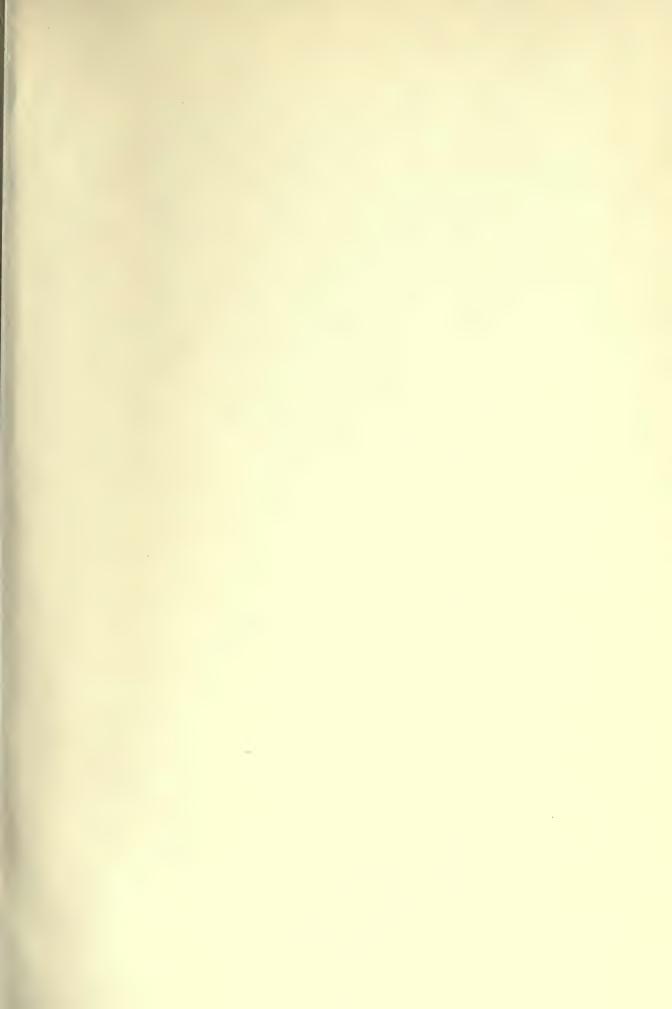
Our hearts, our hopes, our prayers, our tears,

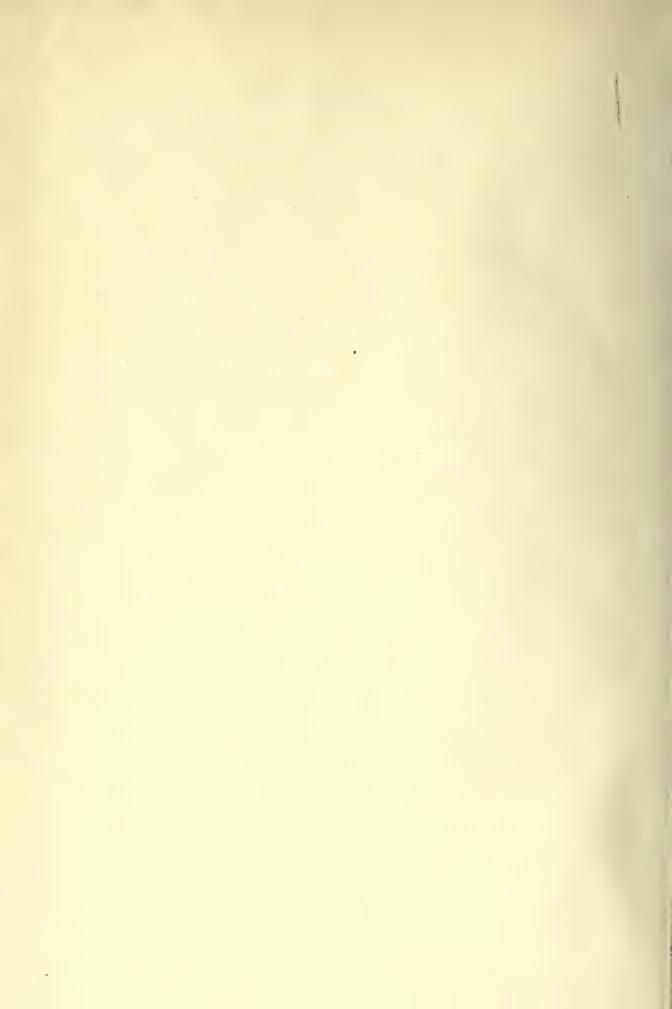
Our faith triumphant o'er our fears,

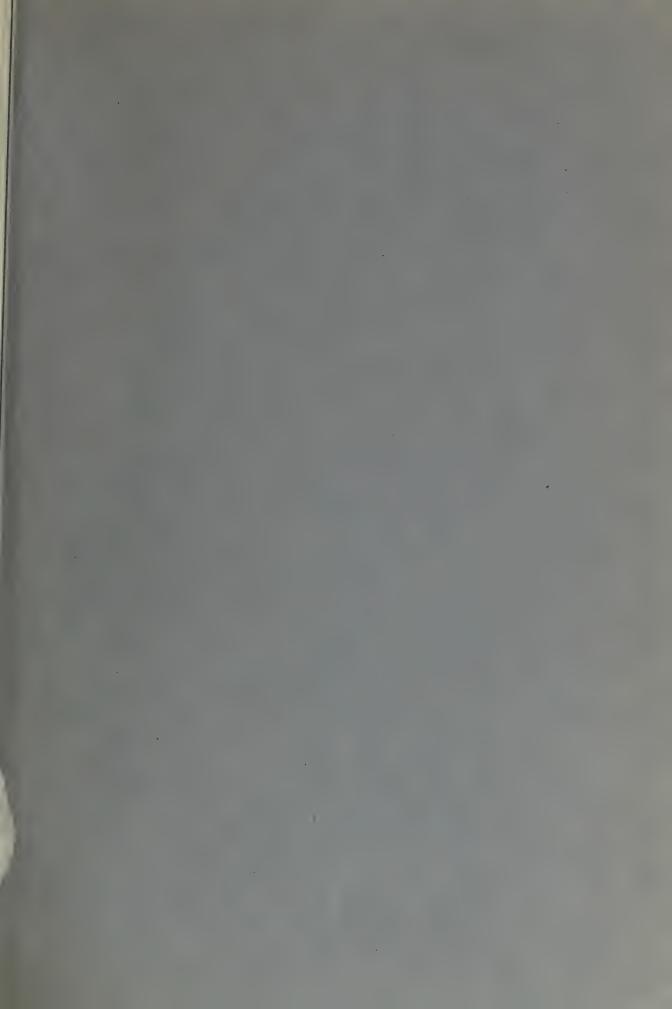
Are all with thee,—are all with thee!

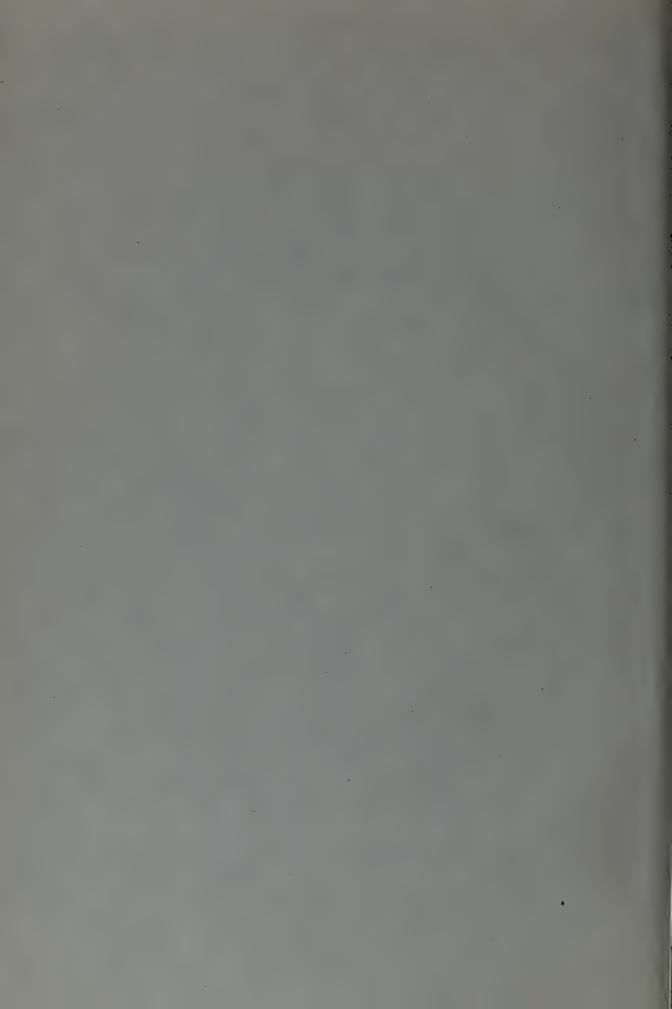
Please God the day may soon come.









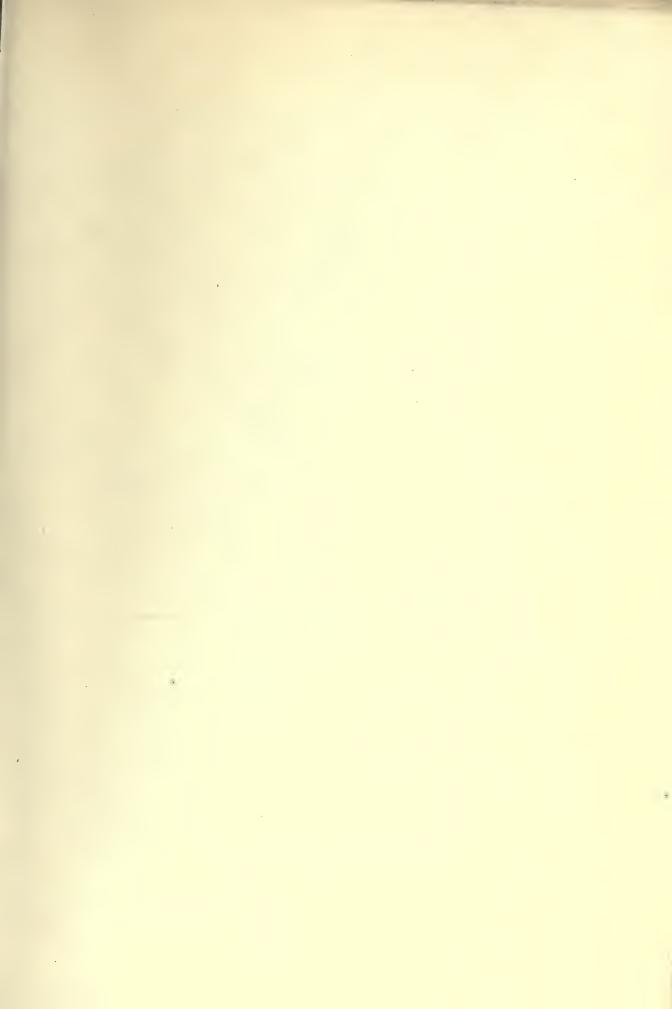


ANOTHER SUPREME COURT

WITH APPENDIX B

WILLIAM RENWICK RIDDELL





ANOTHER SUPREME COURT

WILLIAM RENWICK RIDDELL

I want to protest in the first place about it being said that I have "come all the way from Canada" in order to speak to you. I can leave Toronto at 5.20 in the afternoon, and I can get here before noon the next day. When I was on the trial bench, very frequently I used to go up to part of the Province of Ontario (from which I come), eleven hundred miles away from Toronto (to Washington cannot be more than five or six hundred miles); I would leave Toronto at noon, and I would arrive at my destination two days thereafter. So, when you talk about "coming all the way," you forget that Canada, as well as Washington, is a place of magnificent distances.

At the first meeting of the Society in 1910, Mr. Alpheus Henry Snow read an interesting paper on the "Development of the American Doctrine of Jurisdiction of Courts over States." Premising by saying that "the American Colonists regarded the Colonies as commonwealths and free states," he went on to state that "they believed that the settlement of disputes between States

composing the English Empire . . . ought to be in charge of a specially constituted tribunal fitted by training to act judicially where the judicial method was applicable;" and he pointed out that tribunal was the King-in-Council. That tribunal still exists and flourishes in full vigour, and it is that tribunal which I call "Another Supreme Court."

It is not intended here to reiterate what has been so well stated in Mr. Snow's address but rather to supplement it: nor shall I go largely into the history of this tribunal. All who are interested will find its history traced in an address before the Missouri Bar Association in 1909, published in the American Law Review for 1910, pp. 161-176.

Confining my remarks in great measure to the present and the recent, the first thing that is to be said is that this "Court" is not a court at all. The Judicial Committee of the Privy Council is simply a committee for special purposes of the Privy Council of the King.

In theory the King is the fountain of all justice throughout his dominions, and from time immemorial he has exercised jurisdiction in his Council which acts in an advisory capacity to the Crown. In theory also every subject has the right to submit his grievances to the King—"to seek the foot of the throne." Petitions of that nature which came before the King were after the development of Parliament referred in most part to Parliament which thus became the chief appellate tribunal. From early in the fourteenth century Receivers and Triers of petitions were appointed to relieve Parliament of clerical and routine work and to aid in the administration of

justice. These were of two classes, one for England and Ireland, the other for the remainder of the King's dominions. The petitions from England and Ireland went to Parliament, the original of the present appeal to the House of Lords, the others to the King in Council. It seems to be fairly certain that it was with appeals from Jersey and Guernsey that the King's Council began its regular exercise of the functions of a Court of Review.

But the Council did not confine its activities to the islands and territories beyond the seas: "it continued from time to time to exercise a kind of extraordinary and corrective jurisdiction to prevent violence, corruption or intimidation, and especially combination and conspiracy to obstruct or prevent the course of justice.

"But still much jealousy continued to be manifested from time to time at the exercise of this extraordinary jurisdiction by the ancient body-salutary and necessary as it in many cases undoubtedly was. At last it was thought proper to give statutory authority to its proceedings and a statute was passed in 1487 (3 Henry 7. c. 1). Before this Act the King's Council sat as a rule in the Star Chamber, and when the legislation came to be passed, it mentioned specifically 'the Court of Star Chamber.' This, as Hallam long ago showed, was a kind of Committee, that is a Judicial Committee, of the King's Privy Council. The Court of Star Chamber (as has been shown by recent investigation of its records, still extant) in many cases acted not as a statutory body at all but under the original Common Law Jurisdiction of the Privy Council; and indeed did not conceive of itself as being of statutory origin. Moreover, the Privy Council also continued at times and in certain cases, e.g., in cases of riot, to act outside of the Star Chamber and as the Privy Council had acted before the Statute. Whether the 'Court of Star Chamber' was a Court appears within a few years after the passage of the Act to have been questioned by the Common Law Judges; the great authority of Coke is that the judgment of these judges was 'a sudden opinion.'"

The court fell into disrepute in the Tudor and Stewart times and it was abolished in 1640 by the Statute 16 Car. 1, c. 10—but this Statute in no way affected the existing right and duty of the Council to hear appeals from English territory to which the Common Law writ did not run.

In 1667 a Committee of the Privy Council was formed to hear such appeals, a Judicial Committee, and such a Committee has continued to the present day. There has been legislation more than once but no change has been made in the status of the Judicial Committee. The members of the Committee are gentlemen who are members of the King's Privy Council and who are associated together for the purpose of listening to petitions from a private individual, a corporation, a Province, complaining of wrong. They are to advise His Majesty what he should do in the matter, but they are not Judges. They have of course the same power as any Court to rectify mistakes which have crept in by misprision or otherwise in embodying their judgment: Rajundernarain vs. Sing (1836) 7 Moore P. C. 117.

This body of gentlemen sits in a dull old room in a

building on the north side of Downing Street, Westminster, round a table in the middle of the room. They are not dressed as Judges with gowns, bands and wigs, but in the ordinary costume of an English gentleman. number sitting to hear appeals is not fixed-I have seen four and I have seen seven (three exclusive of the President form a quorum.) One end of the room is raised—here are desks with pens (the villainous quill, of course) and ink for the Bar and the Solicitor. The barristers are all clothed in the conventional English style, black clothes, gown, wig and white bands, and when addressing Their Lordships, the Barrister stands opposite the end of the table at which the members of the Committee are sitting. Every English (and Canadian) Judge is "Your Lordship," "My Lord," but the Committee are addressed as "Your Lordships" not because the members are Judges, for they are not, but because they are members of the Privy Council.

But there is a more important consequence than that of clothes (pace Herr Teufelsdroeckh) following from the fact that the Committee is not a Court. The House of Lords is a Court and as a Court is bound by its own previous decisions; but the Judicial Committee is not so bound—it is not bound by any decision. Of course, its former decisions are treated with proper respect but the case is not without example that they have not been followed.

That reminds me of an incident that occurred when I was myself arguing before the Privy Council, and I mentioned a certain proposition of law. Lord Macnaghten said, "Where do you get that?" I replied, "I took that

from your Lordship's remarks in the argument of such and such a case." He asked, "Did I say that?" I answered, "I have the shorthand notes before me, and your Lordship is made to say that." He said, "If I said that, with very great respect for myself, I think I was wrong."

The present constitution of the Privy Council as a whole is not of much importance. It is never called together except in case of the demise of the Crown. Parliament has, however, taken into its own hands the constitution of the Judicial Committee. The Committee was formerly constituted by the Privy Council itself but that practice no longer obtains.

At the present time the Judicial Committee consists of the Lord Chancellor, the Lord President of the Council, all ex-Lords President, six Lords of Appeal in Ordinary, those members of the Privy Council who have held high judicial office (Lord Chancellor, member of the Judicial Committee, Lord of Appeal in Ordinary or Judge of a Superior Court in England, Ireland or Scotland) and seven from the Dominions overseas.

The present Chancellor is Lord Buckmaster (at least he was yesterday; I do not know whether he is to-day), long an active and successful practitioner at the English Bar. He was Solicitor General on the resignation of Lord Haldane in 1915, and on Sir John Simon the Attorney General declining to accept the Woolsack (as he preferred to remain in the House of Commons and active politics) Buckmaster received the prize of the profession.

Former Lords Chancellors are the Earl of Halsbury, over ninety-one years of age, but still vigorous physically and mentally and paying the debt which every lawver owes to his profession by editing the Cyclopaedia of the Laws of England, and the Earl Loreburn who as "Bobby Reid" was a tower of strength to the Gladstonian party, as charming a companion (crede experto) as he is accomplished as a lawyer. There is also the acute and metaphysical Viscount Haldane whom many Americans remember with admiration addressing the American Bar Association in Montreal a few years ago. Then come the Scot, Andrew Graham Murray, Lord Dunedin, sometime Lord Advocate and then Lord Justice General of Scotland, the Irishman John, Lord Atkinson, formerly the brilliant Attorney General for Ireland, another Scot, Lord Shaw of Dunfermline formerly Solicitor General and Lord Advocate for Scotland—these two Scotsmen are no unworthy successors of Lords Watson and Robertson now no more.

Lord Mersey (Sir John Bigham) of fame and power in Admiralty cases and Lord Moulton better known as Lord Justice Fletcher Moulton, a man of great and accurate scientific knowledge, Director General of Explosives Supply, a F.R.S. and F.R.A.S. come next. Then Lord Parker, who came to the Council after seven years' experience as a Judge of the High Court of Justice, and Lord Sumner who had only three years' experience on the Bench, Lord Parmoore deeply versed in ecclesiastical matters, Lord Wrenbury who as Mr. Buckley was an authority on Company Law and lost none of his repute when he became Mr. Justice and Lord Justice Buckley, and Sir Arthur Channell also came from the High Court of Justice. There are other British mem-

bers ex officio whom I do not wait to name; they seldom if ever take part in the hearing and decision of appeals.

Let us leave now the list from the Mother Country and see who come from across the seas. We find Sir Samuel Griffith, Chief Justice from Australia, Sir Edmund Barton also from Australia, Sir Charles Fitzpatrick, Chief Justice of Canada, Sir James Rose-Innes, Chief Justice of South Africa and Sir Lawrence Jenkins formerly a Chief Justice in India. But the list is not exhausted; Syed Ameer Ali, a Mohammedan claiming to be a Syed in fact. that is, a descendent from Mohammed and glorying in his faith and race, has been for many years a member of the Committee.

"When there is an Ecclesiastical appeal, Archbishops and Bishops also sit—as ecclesiastical assessors; in the rare case of an appeal from beyond the seas in an admiralty matter, Admirals or other naval officers sit as naval assessors. For example in the well-known case, Read vs. Bishop of Lincoln (1892, A. C. 644) the Bishops of Chichester, St. Davids and Lichfield sat; and in a case from his Majesty's Supreme Court for China and Corea in 1908 (A. C. 251) Admiral Lloyd and Commander Caborne."

What are the functions of this extraordinary body?

"At the present time this Judicial Committee hears appeals in English cases only in Ecclesiastical matters. Upon every appeal of this character, at least three Bishops must sit as assessors, under the provisions of a rule made in 1876. The ultimate appeal in other matters from England goes to the House of Lords. In Scottish and Irish matters the Committee does not exercise any appel-

late jurisdiction whatever. But from Courts all over the world wherever the map is marked with red, come appeals. In Europe, from the Channel Islands, the Isle of Man, Gibraltar and Malta as well as from Cyprus; in Africa from the Cape of Good Hope, Natal, the Transvaal, the former Free States, the Gold Coast, Sierra Leone, Zululand, Rhodesia, St. Helena, Lagos, Basutoland, Bechuanaland, the Falkland Islands, Mauritius, Gambia, Griqualand and other 'lands', more or less unknown; in Asia from Bombay, Calcutta, Madras, the N. W. Territory, Aden, Assam, Beluchistan, Burmah, Upper and Lower Oudh, Punjaub, Ceylon, Mauritius, Hong Kong, Borneo, Labuan; in Australasia, Australia, New Guinea, Fiji, New Zealand, Norfolk and Pitcairn Islands and in America from Canada and her Provinces— Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta, British Columbia and from Newfoundland, Bermuda, the Bahamas, Jamaica, British Honduras, and from Guiana in South America and many another British Island lying in that Carribean Sea.

The laws of a score of self governing communities must be interpreted; the English Common Law of the English-speaking colonies modified by local Statutes in Quebec the Coutume de Paris with similar modification, the many varying and various laws of the many East Indian peoples, the Roman Dutch law of the South of Africa, the still more complex law of Malta—all these and more come before that assembly of jurists."

There have been many decisions by the committee in disputes between man and man—decisions of the greatest moment and the most far reaching character.

I do not however dwell upon private litigation. No small part of the labors of the Judicial Committee has been the decision of what in the United States are called constitutional questions. The word "constitutional" has not the same connotation with us as with you. In the American sense "constitutional" means in accord with the written "constitution." With us it means in accord with the more or less vague principles upon which we conceive government should be carried on. With you what is unconstitutional is illegal however just and laudable it may be, with us that is unconstitutional which is wrong however legal it may be.

It was decided in re Bedard (1849) 7 Moore P. C. 23, that the Governor of a Colony like Canada represented Her Majesty and had power (e.g.,) to grant a patent of precedence to a newly appointed judge. But the power of a Colonial Governor in Council must be exercised in (substantially) the proper and regular way. Sometimes a Judge has been "amoved" by the Colonial authorities and reinstated by the Judicial Committee because unjustly treated by being deprived of a right to be heard. Sometimes in such a case the "amotion" has been sus-In Montague vs. Lieutenant Governor Van Dieman's Land (1849) 6 Moore P. C. 489, the Judge was called on to show cause against an order for suspension only and he was amoved. The Committee held that the irregularity did not prejudice him and sustained the order of amotion. I shudder to think what would happen if an American Court were to decide the same way.

There are very many cases dealing with the power of a Colonial Parliament to punish for contempt. A comparatively late instance is Doyle vs. Falconer (1866) L. R. 1 P. C. 328. Some of these point out that the Colonial Parliament is not a Court like the Imperial Parliament as it has no judicial functions. But that the power of punishing for contempts which tend to obstruct its proceedings and directly to bring its authority into contempt is inherent in every Supreme legislative authority is affirmed by such cases as Beaumont vs. Barrett (1836) 1 Moore P. C. 59.

Since the Governor in Council is not quite the King-in-Council and the Colonial Parliament is not quite the Imperial Parliament, there will sometimes arise a question of the limits of legislative power in the local Parliament, and such cases have been coming before the Committee with great frequency. Occasionally the question may require the elucidation of the common law powers of the Imperial Parliament, as for example as in Devine vs. Holloway (1861) 14 Moore P. C. 290, where the effect of a demise of the Crown came under consideration.

But in every case the extent of the power granted to the local Parliament must be looked at, and it has been uniformly held that a local Parliament acting within the ambit of the limits prescribed for it "is not in any sense an agent or delegate of the Imperial Parliament but has plenary powers as large and of the same nature as those of Parliament itself," The Queen vs. Burah (1878) 3 A. C. 889 at p. 904; and consequently it can delegate its powers, etc., which no mere agent could do. Hodge vs. the Queen (1883) 9 A. C. 117 at p. 132.

These powers must be restrained strictly within the limits prescribed. The Dominion Parliament has "Crim-

inal Law" for one of its objects but that does not enable it to make into a crime an act committed outside of the Dominion as the Imperial Parliament could, Rex vs. Brinkley (1907) 14 O. L. R. 434.

I heard stated this morning something that startled me more than anything else in the whole course of my legal career, namely, that the Judicial Committee of the Privy Council has been declaring certain laws passed by local legislatures void as against justice and common right. I have been practising law a great many years, and I have never found such a case.

What the Judicial Committee of the Privy Council does is this. It looks at the Imperial statute by which the local legislature is formed. It finds out the powers which are given by that statute, and if any powers in that statute are exercised, the Judicial Committee never considers whether such exercise is just or right or honest. I shall give you an example.

Not so very long ago, before I went in the Appellate Division, and was sitting on the trial bench, I had occasion to try a case, the Florence Mining Company vs. Cobalt. The Florence Mining Company claimed the ownership of certain mining lands. The Parliament of Ontario, the Legislative Assembly—we have only one House there, and that is enough for us; we are too busy up in Ontario, and too poor, to be bothered with two Houses. I may say that in seven out of nine provinces in Canada they have only one House, two of the provinces still retaining their two Houses; but we in Ontario cannot be bothered with two, as I said.

Well, the legislature of the Province of Ontario passed

an Act saying that the land should belong to the Cobalt Mining Company, mentioning the particular land. The action was brought by the Florence Mining Company against the Cobalt Company, and tried before myself. I went into the facts fully, tried out the facts in the sense of hearing all the facts. I thought it fairly well proved that the land was the property of the plaintiffs originally and before that Act. But I decided that the prohibition, "Thou shalt not steal" does not extend to the sovereign legislature, and I said so in just those blank, bald, words. I decided that the legislature had the right and power of taking that property, even if admittedly of A, and saying that it should be the property of B.

Now, a more gross thing than that, absolutely against all common right, nobody could think of, nobody could conceive of. I refused to pass upon the facts; I said, "I shall assume the plaintiffs have proved their case. I shall decide this upon the constitutional question."

It went to the Court of Appeal; the Court of Appeal went into the facts very fully and decided against the plaintiffs on the facts, but at the same time the Court of Appeal said that the law constitutionally laid down by the learned trial judge was unexceptional and perfectly good law.

That went to the Privy Council, and the Privy Council upheld this decision on both grounds. They said that even if the plaintiffs had proved their case the legislature of the Province of Ontario had the power to take away the property of one person and give it to another.

What the Judicial Committee has done (I venture to think), in all those cases to which my friend has alluded,

has been to go carefully into the Acts of the legislature; that they have gone into the charter of the Province, if you please to use that terminology, and have investigated what power that charter has given to the legislature. They have decided in more than one case, no matter how small a legislature it may be, even of the smallest British island in the world, that so long as the legislature is acting within the ambit, within the four corners of the power which is given to it by the Imperial House, they have the power to do as they please, steal, or anything else they see fit.

In our system it is the people who are the ultimate court of appeal. If the Government did any stealing the matter would come before the people at the next election, and if the people wanted a government that stole, I suppose the people would return the government at the next election. But it is highly probable that if the government did anything of that kind, there would be such a cry raised that it would not be continued. I want you to understand that we are not a larcenous people naturally.

It is at once manifest the very large number of cases which involve the extent of the powers of the Colonial Legislature. In Canada the question has been for nearly half a century complicated by the division of legislative power between Dominion and Provinces. The British North America Act of 1867, sometimes called the written constitution of Canada, sets out fully the objects of legislation of Dominion and Province respectively. The judicial interpretation of this Act has called out the greatest ingenuity and learning from the Com-

mittee and Counsel, and the end is by no means yet. The same sort of dispute may be expected in Australia now federated.

In addition to determining whether this or that legislation is *intra* or *ultra vires* ("constitutional" or "unconstitutional" in the American terminology) questions have arisen more like disputes between States.

In the British North America Act in addition to the division of legislative functions, there is a division of property between Dominion and Province—and it must be remembered that a gift of legislative power concerning any property is not a gift of the property itself. Attorney-General (Dominion) vs. Attorney-General (Province) 1898, A. C. 700, at pp. 709-711.

Many disputes concerning property have come before the Judicial Committee and it has always been considered that such disputes are to be decided on a rule or principle of law and not on what might be thought fair. Dominion of Canada vs. Province of Ontario, (1910) A. C. 637.

The Judicial Committee decides the law; it has no hesitation, if necessary, in changing its action. It has said in at least two cases that, "What we said on such an occasion is not law; we were mistaken. The law is so and so" and they decide the law.

The Committee has been called on to decide the owner-ship of real estate of which the owner died without leaving heirs and without a will. This was allotted to the Province not to the Dominion, Attorney General Ontario vs. Mercer (1883) 8 A. C. 767.

An interesting case arose under the following circumstances. In 1763 certain tribes of Indians were granted

possession of certain lands as hunting grounds "for the present." In 1873 the Indians surrendered this land; (we have had no trouble with Indians—no "H. H." can write a "Century of Dishonor" concerning Canada) and the question arose who should own it. The Judicial Committee supported the claim of the Province and affirmed the decision of the Canadian Courts—St. Catharines Milling & Lumber Co., vs. The Queen (1888), 14 A. C. 46—the same kind of question arose in a later case which I do not stop to discuss. Attorney General (Dominion) vs. Attorney General Ontario (1897) A. C. 199.

British Columbia came into the Dominion in 1871 on the express bargain that the Canadian Pacific Railway should be built across Canada. The land was owned by the Province. The Province granted to the Dominion lands 20 miles on each side of the Canadian Pacific Railway's line, so that the Dominion could give that to the Canadian Pacific Railroad as a bonus for building the road. It turned out that there were precious metals in and under part of this land. The Dominion claimed them, but the Committee held that precious metals, gold, and so on, are not incidents of land but belong to the Crown, and therefore like other royalties, belong to the Province. Attorney-General (B. C.) vs. Attorney-General (Canada) (1889) 14 A. C. 295. So we have the fact of land solemnly granted by the Province to the Dominion, but that grant did not carry the royalty that is, the precious metals which were in and under that land.

The ownership of fisheries and fishing rights, of rivers and lake improvements, and of harbours was strongly contested and was decided by the Committee, Attorney General (Dominion) vs. Attorney General (Provinces) (1898) A. C. 700.

Swamp lands in Manitoba were a matter of dispute and decision, Attorney General (Manitoba) vs. Attorney General (Canada) (1904) A. C. 199; the foreshore in British Columbia in Attorney General B. C. P. R. C. vs. 1906) A. C. 204; water-rights in the railway belt in British Columbia in Burrard P. Co., etc. vs. The King, (1911) A. C. 87, and fishing rights in the same Province Attorney General (B. C.) vs. Attorney General (Canada) (1914) A. C. 153.

It will be seen that the curious situation has not infrequently arisen of land or other property situated within a particular Province being claimed as its own by the Dominion; and indeed all property in the Dominion must be in some Province or another (except such as is in the Yukon and other non-provincial territories).

Since the public property of the whole of the British dominion is in the King, it would seem odd that the King in one capacity would be at law with himself in another, but there is no practical difficulty. When a dispute arises we make the Attorney General of the Dominion party of the one part and the Attorney General of the Province party of the other part.

Another dispute, a dispute between two provinces, is not unlike certain of the disputes which have come before the Supreme Court of the United States:

"By the British North America Act (1867), the Province of Ontario was given the same limits as the former Province of Upper Canada. Ontario always claimed

practically the whole district west of Lake Superior to the Rocky Mountains. She claimed originally up to the South Sea, but she limited her claim ultimately to the Rocky Mountains. And there is a great deal of authority, too, for the supposition that the old Province of Upper Canada went as far west as the Rockies.

"In 1870 by the Dominion Act, 33 Vic. c. 3, the Province of Manitoba was formed with its eastern boundary at the meridian of 96° W. L. At once there was a movement in Ontario, the Government of that Province claiming that it went further West than 96° W. L. although this had long been considered in fact about her western limit. Many communications passed between the Governments, but without result. Then in 1876 an Act was passed (30 Vict. c. 21) extending the limits of Manitoba to the 'westerly boundary of Ontario.' You can see at once that trouble would arise. The Dominion and Manitoba claimed that the westerly boundary was about six miles east of Port Arthur, coming east about where Grand Portage, Minn., is on the shores of Lake Superior. Armed forces of the Provinces of Manitoba and Ontario took possession of Port Arthur, but the scandal was abated by an agreement to arbitrate, December 18, 1883, by the Dominion and Province. Ontario named William Buell Richards, Chief Justice of the Province, and when he became Chief Justice of Canada, his successor Robert A. Harrison, the Dominion, Sir Francis Hincks, and the two Governments jointly Sir Edward Thornton the British Ambassador at Washington.

"These arbitrators made, August 3, 1878, a unanimous award in favour of the Ontario contention, which by this

time was in reality limited to the generally recognized boundary. This was at once accepted by Ontario, but the Dominion refused to ratify the award. At length, in 1883, the two provinces concerned agreed to submit to the Judicial Committee of the Privy Council three questions (1) whether the award was binding, as the Dominion claimed that no government can bind the country to anything that requires an act of Parliament; (2) if not, what was the true boundary, and (3) what legislation was necessary to make the decision effectual.

"The Judicial Committee, August 11, 1884, decided (1) in the absence of Dominion legislation the award was not binding, (2) the award laid down the boundary correctly, and (3) Imperial legislation was desirable (without saying it was necessary).

"The Imperial Act (1889) 52 and 53 Vic. c. 28, carried the decision into effect, and ended the controversy."

I should like to add here some words of my own with which I closed the address to the Missouri Bar Association already mentioned:

"There have been occasions upon which suggestions have been made, more or less seriously, that the jurisdiction of the Privy Council over self-governing communities, such as we have in Canada and as are in Australia and New Zealand, should cease. For example when the Supreme Court of Canada was established in 1875, there was considerable discussion looking to the abolition of the right to appeal to the Privy Council from the Court so established. Wiser counsels prevailed and no attempt was made to prevent such appeals by legislation. Now an appeal lies as of right from the highest court in each

Province in cases of sufficient magnitude and also by special leave from the Supreme Court of the Dominion.

"No feeling exists that this should be altered—occasionally of course the unsuccessful party to an appeal, and those who sympathize with him make a doleful noise against the Board but this speedily dies out.

It is wholly beyond controversy that Canadians generally would deplore any attempt to interfere with their traditional right to apply for justice to the foot of the throne.

"In other colonies the right continues in a more or less complete form—and from all appearances will so continue while the British Empire itself continues—and may that be not ad multos annos alone, but in aeternum."

Whatever may be the case in respect of private litigation, it seems to me that the Judicial Committee will have forever the task of determining controversies between the integral parts of the Empire.





APPENDIX B

THE HISTORY OF THE PRIVY COUNCIL AS A LEGAL TRIBUNAL OR COURT

[Note: After the reading of the paper "Another Supreme Court," Mr. Justice Riddell was requested by the Association to supplement the paper by an account of the history of the Privy Council as a Court—the following is accordingly furnished.]

The King's Privy Council is a "Common Law" body, that is, it was formed by a process of evolution when the common law of England was in the making and not *uno ictu* by decree of Monarch or Act of Parliament.

The precise origin of the Privy Council is of little importance, historically or otherwise: we know that before times which are in the full sense historical the King could not see to it personally that all his subjects had justice done to them; and he had therefore the assistance of a body of men chosen by himself, a Council.

To this Council was entrusted the administration of justice; in course of time, formal courts were formed from the Council, the Courts of King's Bench, of Exchequer, of Common Bench, with special functions and apparatus for the performance of these functions. But thereafter there remained no inconsiderable part of the original jurisdiction of the Council unallotted and this continued to be the case on the crystallization of the Court of Chancery. The Privy Council continued from time to time to exercise "a kind of extraordinary and corrective jurisdiction to prevent violence, corruption or intimidation; and especially combination and conspiracy to obstruct or prevent the course of justice."

This was the case before the creation of the Court of Star Chamber in 1487 by 3 Henry VII, c. 1, the name of the Court being taken from the Chamber wherein the Council was accustomed to sit—the Court of Star Chamber, as Hallam points out, was in fact a Judicial Committee of the Privy Council.

After the statute, the Privy Council continued to sit on occasion under its original Common Law jurisdiction and quite independently of the statute: but most of the business was done in the statutory court.

The Court of Star Chamber was abolished in 1640 by the act 15 Car. I, c. 10, which provided that neither the King nor the Privy Council should have jurisdiction over the estates of any of the subjects of the kingdom but that all questions respecting the same should be tried and determined by the ordinary course of law in the ordinary courts.

But this Act of the Long Parliament dealt only with subjects of the Kingdom and not at all with subjects of the King in territory without the Kingdom: and any subject in a dependency had still his right to apply to the King in Council as before. Moreover at the Common Law the original jurisdiction to decide cases "relating to the boundaries between provinces, the dominion and proprietary government is in the King and Council," as Lord Chancellor Eldon says in the famous case of Penn v. Lord Baltimore (1750) 11 Vesey Sr., 444 at p. 446. This jurisdiction was not at all interfered with by the Act of 1640.

It does not seem to be quite certain when appeals came first to the Council from non-English territories of the King of England; but apparently it is practically certain that they came from the Channel Islands. Until the seventeenth century the foreign dependencies were not of great importance; but in that century appeals are found coming in; and in 1667 a special Judicial Committee was formed by the Privy Council from its members to deal with such appeals. This was without any authority from Parliament, for none was needed, the authority of the Common Law being sufficient.

After the Revolution of 1688 the appeals began to increase, and in 1691 an order was passed that "all appeals be heard as formerly by the Committee who are to report the matters so heard by them and with their opinion thereon to the King in Council." This "Committee for Appeals" had jurisdiction over appeals from the supreme courts of the Colonies. Early in the eighteenth century Colonial appeals began to come in in considerable numbers: and many most important matters were passed upon by the Committee.

The celebrated Penn v. Lord Baltimore case already referred to was in fact to determine the rights of Pennsylvania and Maryland over part of the present Delaware: but it was arranged that the matter should be tried as a civil suit in Chancery: this was done: and the King in Council made an order in accordance with Lord Hardwicke's decision. But this case can not be cited as an instance of judicial power.

While there are many instances of the decision by the Committee in Colonial times on private litigation, I am not aware of the exercise of judicial power in any public controversy, e.g., of boundary, etc. (Mr. Snow's valuable address at the first meeting of this Society should be consulted.)

Indian appeals stand on a peculiar footing: the right to appeal was first given in 1773, 16 George III, c. 63. Turning now to another jurisdiction of appeal we note that originally within England appeals, so far as they were allowed at all from the Courts of Law, went to the Court of Error, or to the Lords—from the admiralty to the King in Chancery, that is in practice to a Court of Delegates and from the Ecclesiastical Court to the Pope, that is in practice to Delegates appointed by the Pope. After the Reformation in 1532 (24 Henry 8, c. 12) appeals to Rome were forbidden; and the next year (25 Henry 8, c. 17) it was provided that appeals from the Archbishop's Court should be to the King in Chancery—he appointed Delegates forming a High Court of Delegates to hear these appeals.

In 1832 (by 2 and 3 Wm. 4, c. 92) the appeals in Ecclesiastical matters which since the Reformation had been to the High Court of Delegates, as well as appeals in Admiralty were transferred to the King in Council. The following year the statute 3 and 4 Wm. 4, c. 41 was passed which regulated the constitution of the Judicial Committee for the hearing of appeals—which Committee was to consist of the Lord President of the Council, the Lord Chancellor, and such members of the Privy Council as shall hold the office of the Lord Keeper, First Lord Commissioner, Lord Chief Justice, Lord Chief Baron, Master of the Rolls, Vice-Chancellor of England, Judge of the Prerogative Court, Judge of the Admiralty, the Chief Judge in Bankruptcy, and all Privy Councillors who shall have held any of these offices—to which the King by sign manual might at any time add two other Privy Councillors.

By the same Statute of 1833 it was provided that all appeals from the Admiralty, Vice-Admiralty, or other Courts abroad which theretofore had lain to the High Court of Admiralty in England should be to the King in Council.

By the Act of 1832 (2 and 3 Wm. 4, c. 92) the appeals which in Admiralty cases had from even before the 25th Henry 8, gone to the King in Chancery and so were heard by the Court of Delegates, were transferred to the King in Council. So by 1833, we have the King in Council vested with the statutory powers of hearing Admiralty and Ecclesiastical appeals, and still continuing to exercise a power which did not depend upon Statute of supervising the proceedings of all Courts in the British Dominions not within the four seas. these appeals—all appeals to the King in Council—were to be referred to the Judicial Committee who were to report to His Majesty in Council. By this Act two ex-Judges from India or beyond the seas were also provided for. Further Ecclesiastical appeals were provided for in 1840 (3 and 4 Vic., c. 86); this act also got rid of an anomaly—Ecclesiastical appeals could theretofore have been heard without a single Bishop or Ecclesiastical Judge being upon the Committee—this Act provided that every Archbishop and Bishop of the United Church of England and Ireland who should be a member of the Privy Council should be a member of the Committee for the hearing of such appeals and one at least be present. Another Ecclesiastical appeal is given in 1874 (37 and 38 Vic., c. 85) and in 1846 (27 and 28 Vic., c. 21) an appeal is given in prize cases. In 1871 (34 and 35 Vic., c. 91) provision was made for four Judges or ex-Judges of the Courts at Westminster or in India being appointed.

Then came the Supreme Court of Judicature Act of 1873, whereby all Admiralty appeals were taken away from the Committee; and in 1876 the provision was made for four Lords of Appeal in ordinary at a salary of £8000 each to sit in the House of Lords and, if Privy Councillors, also in the Judicial Committee.

In 1877, all jurisdiction on the part of the Queen in Council in matters of appeal from Ireland was abolished. In 1895 a very important provision was made that any Judge or ex-Judge of the Supreme Court of Canada or any

Superior Court in any Province of Canada, of Australia, New Zealand, Cape of Good Hope or Natal, who should be a Privy Councillor should also be a member of the Judicial Committee.

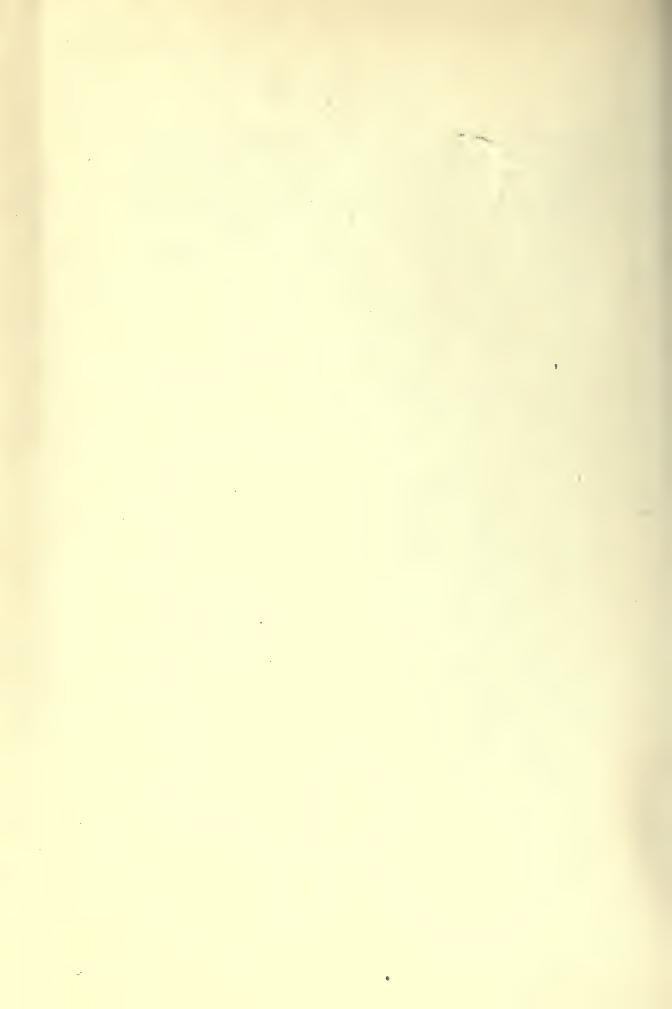
At the present time this Judicial Committee hears appeals in English cases only in Ecclesiastical matters. Upon every appeal of this character, at least three Bishops must sit as assessors, under the provisions of a rule made in 1876. The ultimate appeal in other matters goes to the House of Lords. In Scottish and Irish matters the Committee does not exercise any appellate jurisdiction whatever.

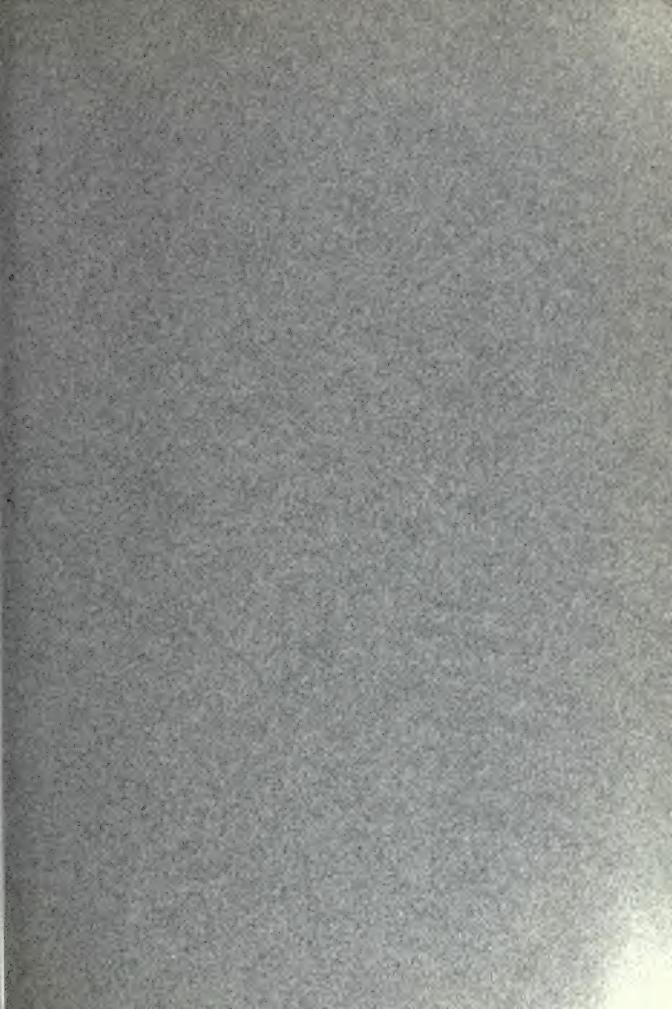
After many centuries of self-government by the Privy Council, Parliament took it in hand to constitute the Judicial Committee itself in 1833 by 3 and 4 Will. IV c. 41; the statute directed who should form the Committee, the appointment of a Registrar and generally laid down regulations. Since that time the Judicial Committee has been purely statutory, and the Privy Council has not been in that regard *imperium in imperio*. Most of the subsequent legislation deals with the constitution of the Judicial Committee and is not of interest to Americans.

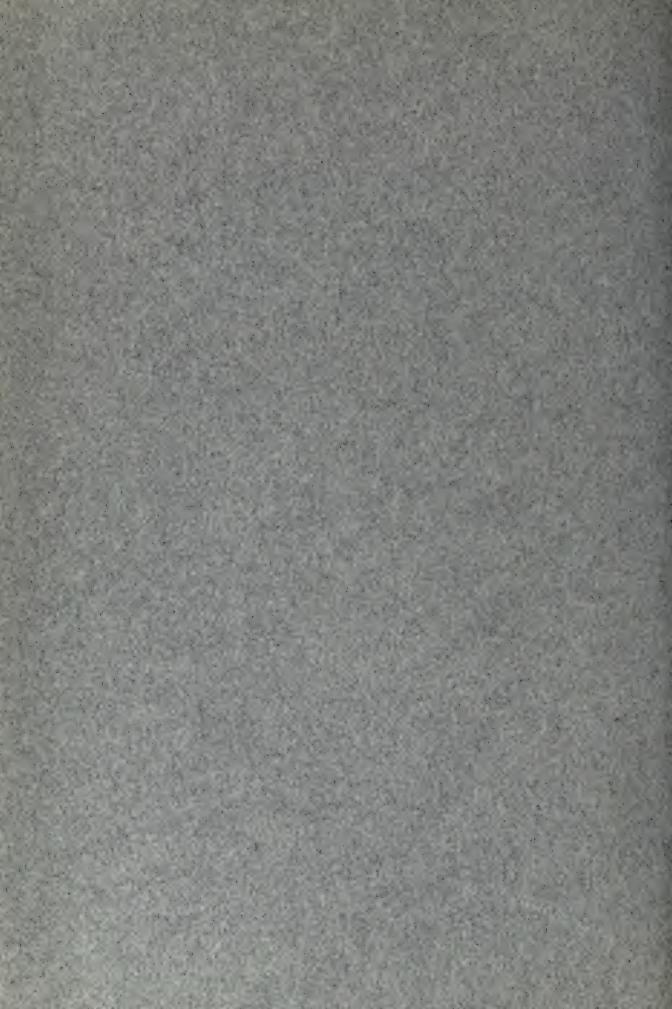
Those desiring precise information may look at the Statutes: 7 and 8 Vict., c. 69, s. 9; 14 and 15 Vict. c. 83, s. 16; 39 and 40 Vict. c. 59, ss. 6, 14; 44 and 45 Vict. c. 3; 50 and 51 Vict. c. 70, s. 4; 58 and 59 Vict., c. 44; 8 Ed. VII, c. 51; 3 and 4 Geo. V, c. 21.

An interesting account of the Court of Star Chamber, etc., will be found in the Introductions to two volumes of the Selden Society Seria viz: "Select Cases before the King's Council in the Star Chamber, etc.," (1903), Vol. XVI, (1910), Vol. XXV, in which the motto περὶ παντὸς τὴν ἐλευθερίαν is honoured in the observance; Anson's "Law and Custom of the Constitution" has short but accurate references; Lord Eustace Percy's "The Privy Council under the Tudors" is interesting but not helpful for our particular purpose; Wood Renton's pamphlet on "The Conditions of Appeal from the Colonies to the Privy Council" is valuable, as of course are Pownall's "Administration of the Colonies;" Macqueen, "Appellate Jurisdiction of the House of Lords and of the Privy Council," and (the second edition of) Bowyer's "Commentaries on the Constitutional Law of Enlgand." Dicey's "The Privy Council" can scarcely be considered worthy of that very eminent legal writer; my own address before the Missouri Bar Association will be found in the American Law Record for 1900, and no one can ever safely neglect Blackstone.

WILLIAM RENWICK RIDDELL.







THE PRESENT OUTLOOK

WILLIAM RENWICK RIDDELL



THE PRESENT OUTLOOK

It is the convention to begin an address on occasions of this character by expressing delight at being present; but it is not for that reason that I say that I am more than glad to be permitted for the third time to take part in the proceedings of this Society.

I have had some difficulty in persuading some of my friends at home of the propriety, the seemliness, of a Canadian, whose country is at war, who is proud that his country is at war, attending the sessions of a society whose function it is to prevent war and to substitute for war with its horrors another, a more humane and civilized method of settling disputes of an international character.

But this our Society was founded and had begun its beneficent work, years before the commencement of the present war; it has no thought of interfering with the course of the war (were it otherwise I should not be here).

For as

We draw the sword to keep our troth Free from dishonour's stain;

We Pray

Make strong our hands to shield the weak, And their just cause maintain. Our Society has not varied from its original objects—nay its avowed purpose is the same as the avowed object of the Foreign Secretary of Great Britain in July, 1914, before the war broke out. Of his sincerity and good faith, we Canadians have no doubt; but the record is open, let everyone, neutral or belligerent, judge for himself.

It is therefore wholly fitting for the citizen of a country which asserts that its responsible statesman wholeheartedly desired and in good faith urged that the dispute which had arisen, so far as it was not composed by the two parties, should be referred to a Judicial body at The Hague—that the citizen of such a country, I say, should be a member of a society for settling all international disputes in that way, a way which commends itself to the intelligent, the civilized, the humane, the Christian.

I was a little criticized by some of my friends in Canada because I represented my Country at the celebration of the Centenary of the Battle of Plattsburgh and of that of New Orleans. But there, too, my skirts are clear, my reason perfect. I gloried not in the battles in which my peoples suffered defeat (no dishonorable defeat, be it said) but in the fact that these battles were a hundred years in the past, that the one made peace possible and the other made peace palatable and therefore permanent; that thereafter the two peoples had decided their disputes not by arms, by blood and agony and death, but by the peaceful ways of diplomacy and contract—by making bargains and sticking by them; by interpreting these bargains when they disagreed, not by rifle and cannon, shot and shell, but by the legal acumen and skill of the ermined Judge or the practical sense of the conciliatory arbitrator.

In the consideration of the only proper and logical causes of disputes concerning international rights, there are two fundamental elements which must always be borne in mind. There is national feeling, national sentiment, national pride, national predilection, call it what you will—kultur if you like—which every nation possesses in a greater or less degree, and which impels us to look upon all things from a national standpoint—to magnify national rights of the one nation, and to minimize the rights of all others. This is the fount of the spirit which says: "What my nation wishes is right, what it wants it must have, there is no law but my people's will, let all other nations great and (especially) small make way for them."

Then there is the other concept of which no nation is absolutely devoid; of which every nation claims a great share, and would like the world at large to think it has more than is always manifest; there is the sense of the right, the essentially right, the moral law implanted essentially and ineradicably in every human heart. Kant, speaking of this sense of law, which most of us conceive as coming direct from God himself, compares it with the starry heavens and finds them both sublime:

Two things do fill my soul with speechless awe, The starry heavens and mankind's sense of law.

It is by the action, reaction and interaction of these two principles that the nation's view of international relations must be determined.

In my mathematical days I took delight in Conic Sections—what this degenerate age is wont to call Ana-

lytical Geometry. There were set forth, enunciated, elaborated, established, the properties of the ellipse. With two coördinate foci, the shape of the ellipse is determined by their relative distance apart. Remove the foci from each other, the ellipse becomes more and more flattened, less and less like a circle, until it is almost a straight line; approach the foci and the closer they come the nearer the figure comes to the circle, until when they coincide all ellipticity disappears and the perfect circle emerges, uniform in all directions, curving alike everywhere.

Let us conceive of the two principles of which I have spoken as the foci of the ellipse of the national concept of international duty. We find that as they are removed from each other, the view of international duty will become more and more narrow, that it more and more looks only in the one direction and has less and less dimension in any other. But let the national spirit come close to the eternal right, the everlasting justice, the moral and fundamental law implanted in the very soul of man, and the view will become broader until at length it stands forth facing all the winds of heaven alike with the same countenance, and, like the judgments of the Lord, true and righteous altogether.

A nation in which the national spirit is far removed from the justice of God may indeed glory in war. It can look but in the one direction and may justify war as necessary to attain its desires; it may indeed consider war not only necessary to crush opposition to its aims and objects but also as noble in itself because showing the power of the State and the devotion of the citizen.

But a people which has its national spirit thoroughly imbued with the impelling thought of justice can take no delight in war. War, the *ultima ratio regum*, may indeed interpret a law of man—it is sometimes said that the American Civil War interpreted the Constitution of the United States—but no war, no force, can interpret a law of God; can make that right which was wrong before. If what is just be all that is desired, war will be looked upon with disfavor—nay, abhorrence; for what distorts the sense of justice like armed conflict?

I am wholly persuaded that the century of peace, the glory of your people and mine, has been rendered possible, nay inevitable, by the two people measuring their international rights with God's yard-stick, His eternal and immutable law; that they have prayed with Job; "Let me be weighed in an even balance that God may know mine integrity."

Not that such a nation will wholly escape war; it will and must strive against it, but there may come a time when war cannot be avoided. I hate violence as much as any man; but I would not if I could help it allow a thief to rob me, even if I had to use violence; if a housebreaker persists in breaking into my house I will shoot him without a qualm if no other means is possible to keep him out. Because I believe in Courts, I do not drive the policeman away from my street corner and I do not complain if he carries a night-stick.

In this place I express no opinion as the cause of the present war—the record is open and everyone must judge for himself—and I have been too long at the Bar and on the Bench not to know that every case has two sides.

If, as they claim, the Germans desiring peace had no other way to prevent an unjust and unprovoked invasion of their country than to declare war and press offensive warfare against an aggressor, they had a perfect right to do so, and no reproach can be made of that action; their conduct was in accord with the highest law.

So, too, if Britain entered the war to keep her pledged faith, to defend the helpless and to prevent the destruction of a peaceful and peace-loving people—and that we proudly claim and we firmly believe—if she used every honorable means to avoid the terrible conflict—and that we proudly claim and firmly believe—then had she acted otherwise, she would have been an object of scorn and contempt, a by-word and a perpetual hissing among the nations of the earth, forgetful of her past, marred as it is by some faults, but on the whole of dignity, justice and righteousness. And that is why Canada, free to choose for herself, without compulsion, physical, legal or moral, at once pledged every last man and every last dollar in the cause we are supporting.

A peaceful non-military people, loving peace as the apple of the eye, we are therefore not ashamed to be at war. We ask no sympathy, except such as comes from a calm and dispassionate consideration of the facts themselves. If our conduct be such as to commend itself to the judgment instructed in the facts, we welcome sympathy; if not, we do not desire it. Above all we spurn sympathy which is but another name for pity. We have no desire that this Republic shall be aught but neutral —it is better so—but we do not desire that that neighbour at peace shall pity us because we are at war. We are

proud that we are at war and that Canada has found her soul.

Blow, bugles, blow! They brought us, for our dearth, Holiness, lacked so long, and Love and Pain. Honour has come back, as a king, to earth, And paid his subjects with a royal wage; And Nobleness walks in our ways again, And Canada has come into her heritage."

Few of us there are who have not those near and dear to us at the front; many have suffered the loss of son or other kin; but we refuse to repent.

When the ends of this war are attained, but not sooner, peace will come again. Peace will come in time, and Canada will welcome it with a full heart; but never again will she allow her soul to be corroded with the rust of material success, or infected by the poisonous, sordid love of money.

Many there are who despair of civilization, whose hearts wrung by the horrors of the present war, are down-cast, as there appears to them no reasonable prospect that wars will ever cease.

I cannot think their despair warranted.

The last time I attended a banquet in this room, Dr. David Jayne Hill told a story which burned itself into my mind. I have not forgotten it—I cannot forget it. He said: "Sitting under the shadow of the Cologne Cathedral on a night in August after having dined in the open air on the terrace, I saw a little boy coming along with a great roll of broadsides under his arm, swinging one out in his hand and saying, in German of course; 'Proclamation by the Czar of Russia.' Everybody was

excited; everybody wondered if it was a proclamation announcing some great calamity, perhaps a declaration of war. Everybody bought a copy of the broadside. I bought one, glanced over it and in a moment realized that it was a copy of the rescript of the Czar of Russia inviting the nations to assemble in an international council in order to arrest the progress of the armament of nations. In five minutes after the sense of that document had been comprehended by those who read it . . . everybody was smiling,—and it was a smile of indifference. I did not see one countenance expressing any serious appreciation of the purpose of the rescript . . . It seemed to mean nothing."

Of a surety the Chancellor, Von Bethmann-Hollweg, did not exaggerate when he said the other day: "We never concealed our doubts that peace could be guaranteed permanently by international organizations, such as arbitration Courts."

That picture of what took place on the Cathedral terrace impressed me strongly, it haunted me; I felt that sense of having heard it all before which ever now and then we all feel and cannot account for. At length it flashed upon me that I had heard it before, that the same thing happened on Calvary nigh nineteen centuries ago, when they that passed by wagged their heads and jeered: "If thou be the Son of God, come down from the Cross."

Not only in Cologne, but also in Paris and in London, yes, in Ottawa, it is possible in Washington, too, there were those who ridiculed the thought that anything good could come of any movement looking to the prevention of war by international agreements or other peaceful means.

If a rescript of the Czar of Russia looking toward reduction of armaments or, however indirectly, toward preventing war, should now be presented to the populace in front of Cologne Cathedral, would they all smile a smile of indifference? Would it be looked upon as "another piece of sentimentalism, another exploit of imperial impulsiveness?" And would the diplomatic world treat it with "quiet, courteous disregard?"

What does it mean when the Chancellor, no doubt with the full approval of his Imperial Master, says: "If at and after the end of the war, the world will only become fully conscious of the horrifying destructions of life and property, then through the whole of humanity there will ring out a cry for peaceful arrangements and understandings which, as far as is within human power, will avoid the return of such a monstrous catastrophe. This cry will be so powerful and so justified that it must lead to some result."?

And what mean the words of Lord Grey?

"I think public utterances must have already made it clear that I sincerely desire to see a league of nations formed and made effective to secure future peace of the world after this war is over. I regard this as the best, if not the only, prospect of preserving treaties and of saving the world from aggressive wars in years to come. If there is any doubt about my sentiments in the matter, I hope this telegram in reply to your own will remove it."

Of Lord Bryce?

"London

Ex-President Taft, New Haven, Conn.:

Those working here on your lines send heartiest sympathy with and best wishes for your League's efforts.

BRYCE."

Of Premier Briand?

"In basing your effort on the fundamental principles of respect for the rights and wishes of the various peoples of the world, you are certain of being on common ground with the countries who, in the present conflict, are giving their blood and their resources, without counting the cost, to save the independence of the nations."

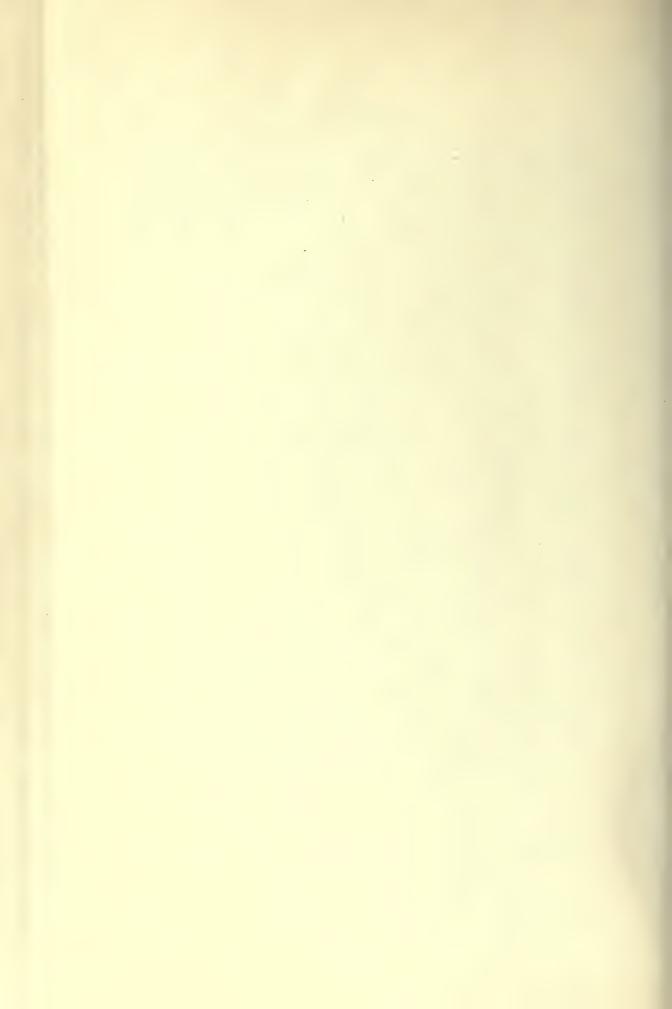
You may say that the utterances of one or of the other are wrung from him by the agony of a bleeding country and the bitter disappointment of defeat, actual or prospective. Be it so, if you will,—is it not a great thing, a splendid omen, that such words are said at all?

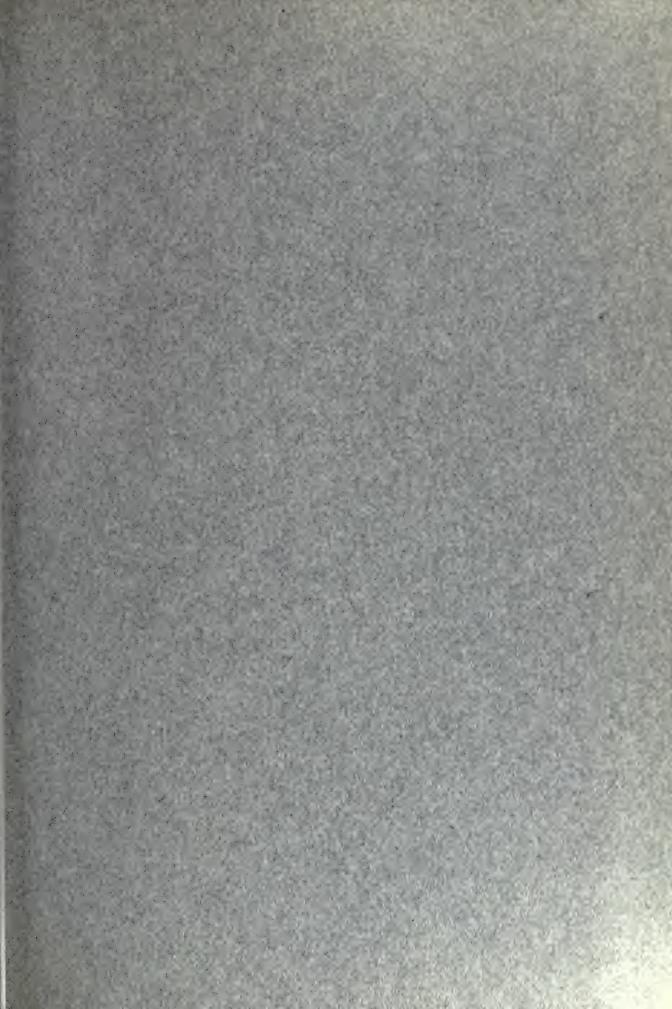
Let us not despair. I repeat what I said in another place before the war began: "No doubt the watchman on the tower will often hear the anxious question, 'Watchman, what of the night?' before, looking eastward he can say, 'The morning cometh,' without adding 'and also the night.' But that answer will be made. Weary hearts looking for world peace will again and again be saddened by wars and rumors of wars; but these must cease at length. Christ died upon the tree to save mankind, and nineteen centuries after his sacrifice but the fringe of heathendom has heard the good news; yet his kingdom is secure, his throne as the days of heaven."

. . . Peace "must triumph or all moral governance of the Universe is impossible. Far, far back the

Hebrew prophet saw what must come to pass unless there is nothing but blind chance. 'The government shall be upon his shoulder and His name shall be called Wonderful the Prince of Peace. Of the increase of His government there shall be no end The zeal of the Lord of Hosts will perform this.'"

Even if there is not to be world peace, there may at least be peace so far as your great nation and mine are concerned. The United States does not need to show its power; its glory is gained and is imperishable, it can be diminished only by the United States itself; the altruism exhibited in the case of Cuba, the ardent love of peace exhibited in bringing about the Conference and Treaty of Portsmouth are all to its credit. You and we have lived side by side at peace. We are near, very near neighbors; we have four thousand miles of international boundary without a soldier or a fortification; we have hundreds of square miles of international waters for nearly a hundred years unpolluted by the keel of a ship of war. As very brethren we have lived thus far for a century without war; and we are determined that that century shall become another century, and another, and another, yea, till time shall be no more, for sooner shall the earth be shaken out of her place and the pillars thereof tremble than that a peace which is based upon righteousness shall be broken, and He who cannot lie has said: "the work of righteousness is peace and the effect of righteousness, quiet and assurance for ever."







Journal

of the

American Judicature Society

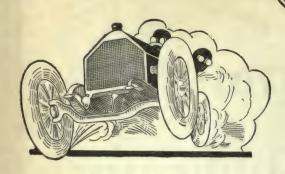
To Promote the Efficient Administration of Justice

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We regard the courts as a business institution to give the people seeking their aid the rights which facts entitle them to, and that with a minimum of time and money. We are a poor and busy people. We cannot afford to waste either time or money. —William Renwick Riddell,

Supreme Court of Ontario.



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Bulletin IV-B—Second draft of Metropolitan Court Act. Court organization for large cities. Pp. 94.

Bulletin VI—Organization of Courts, by Roscoe Pound; Methods of Selecting and Retiring Judges, by Albert M. Kales; Local Courts of Limited Jurisdiction (for rural counties), by Herbert Harley. Pp. 68.

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The Municipal Court of Chicago, historical and descriptive. Pp. 43.

some persons believed that a separate criminal division with its own chief justice would function better than one which was co-ordinate with other divisions.

A single clerk's office for both divisions is provided so that one officer will be responsible for the large force of clerks

employed.

The needs of Chicago's suburbs are cared for by providing that the metropolitan court may hold sessions in any incorporated town in Cook County which has a population of 5,000 and maintains suitable facilities for holding court without expense to the county or state.

Provision is made for the appointment of "assistants," if the Supreme Court so authorizes, by the chief justices jointly with the consent of a majority of the judges. It is presumed that the assistants will perform the duties of masters and referees.

Circuit judges throughout the state are to be elected, as formerly, for six year terms, but in Cook County the voters may initiate a special election to vote on the proposal that judges shall be appointed for six years by the governor from a list of at least four names to be submitted by the Supreme Court. If this plan is adopted there shall be at the end of each term a submission to the electorate of the question whether the judge shall be retired. If not adopted, the proposal shall not be resubmitted for six years.

This plan appears to exorcise the demon politics about as thoroughly as can be done unless appointments are made wholly within the judicial organization. It would at least insure expert selection and long tenure to faithful judges, features which are now very much sought by the people of Cook County.

Rule-Making Power Conferred

The new constitution marks a great advance also in conferring upon the Supreme Court a wide rule-making power. The section reads as follows:

Sec. 93. The Supreme Court shall have exclusive power to prescribe rules of pleading, practice and procedure in all courts; but rules not inconsistent therewith may be prescribed respectively by the other courts of record. Any rule of court may be set

aside by the general assembly by a special law limited to that purpose.

This delegation of rule-making power is practically the same as that given the Supreme Court of Ontario, under which, in over forty years, the parliament has not once annulled any rule made by the court.

The proposed constitution leaves no doubt as to jurisdiction in declaratory proceedings, using the following language:

Sec. 122. Provision may be made by rule of the Supreme Court for the bringing of actions or proceedings in which a merely declaratory judgment or decree or order is sought and for authorizing the court to make a binding declaration of right whether or not any consequential relief may be claimed.

The Supreme Court is also empowered to appoint the judges of the Appellate Courts in four districts, which at present are designated by the Supreme Court from the staff of Circuit Court judges.

The Convention had a hard struggle over the demand of Cook County for larger representation on the Supreme Court of seven than by a single justice, as now. The result was a redistricting which keeps the number of justices at seven, two of whom will be elected in Cook County.

Outside of Cook County the Circuit Court will remain as formerly, with three judges in each circuit. In a few large counties the special probate courts are merged in the county courts and in a number of cities the judges of special city courts will become circuit judges.

The Supreme Court is empowered to transfer judges from one Appellate Court to another and from one Circuit to another. This power, if delegated to an individual justice, may be exceedingly useful in equalizing judicial work and preventing local congestion of dockets.

J. P. Evils Minimized

Progressive thought is registered in the way the constitution deals with the justice of the peace problem.

Sec. 116. Justices of the peace and constables outside of the county of Cook shall be elected or appointed in such towns or districts, and such justices of the peace shall have such uniform jurisdiction, as provided by law. They shall receive salar-

ies from their respective towns or districts to be fixed by the county board.

The foregoing not only makes the justice of the peace amenable to the legislature, and subject to extinction, but also relieves him of the temptation to encourage litigation in order to make fees. a salaried officer he will be subject to the criticism of the county board.

In Cook County the chief justice of the civil division of the Circuit Court shall appoint a justice of the peace and constable for each town to hold for two years. This will lead to the selection of capable lawyers for this office and rid the county of certain scandalous squires who have preved on auto drivers.

The Judiciary and the Administration of Justice In the Province of Ontario

The Honorable William Renwick Riddell, LL.D., Etc. Justice of the Supreme Court of Ontario

I feel particularly flattered by the invitation given me to address the Judicial Section of the American Bar Association. and equally, if not more so, by the request that I should speak of the judiciary of my own province. I accept in no missionary spirit, but in that of fraternity and comradeship-I do not say or suggest that our methods are the better; but I do urge that as you and we and all the Englishspeaking peoples are one in essence, one in the feeling for justice and law, for the determination of rights on principle and not by the whim and caprice of judge or lord, so each branch of these imperial peoples may benefit by the consideration of how another has attempted to solve problems which are common to all and of the success obtained in the endeavor.

For more than a century our province has been permitted to develop its legal system in its own way, without interference on the part of the mother country, or any other.

For the two years after its organization, the Province of Upper Canada (now Ontario) had four Districts, and in each District a Court of Common Pleas, with full civil jurisdiction in the District. The English civil law having been introduced

1. This address was delivered before the Judicial Section of the American Bar Association, at Boston, in

in 1792 by the first Act of the first Parliament of the province, it was early determined to introduce the English system of courts. Accordingly in 1794, an act was passed creating a common law court, the Court of King's Bench, with full jurisdiction, civil and criminal, throughout the province and having its seat at the capital. That court was in 1837 and 1849 supplemented by a Court of Chancery and in 1849 by a Court of Common Pleas (with the same power and jurisdicton as the Court of King's Bench). These three were in 1881 combined with the Court of Appeal into a Supreme Court of Judicature, now the Supreme Court of Ontario, with full jurisdiction, legal and equitable, civil and criminal.

The Ontario Bar

First, however, I shall speak to you of the Bar because, according to our system, no man can be a Judge of the Supreme Court of Ontario unless he has been at least ten years at the Bar of Ontario—he cannot be a Judge of the inferior courts unless he has been a member of the Bar of Ontario for at least seven years. In our country, no layman tries any case, no matter how small—a case involving five cents is tried by a Judge who has been appointed a Judge by the Government of the Dominion of Canada for life, and who has

been at least seven years at the Bar of Ontario.

The Bar is a self-governing body: the courts do not call to the Bar of Ontario. Every five years (at the present time) the barristers in Ontario cast a vote for thirty men whom they desire to be Benchers, as we call them. Those thirty men, together with some ex officio members, constitute a body corresponding to the senate of a university and in some respects to a board of governors. They have entire charge of all matters relating to admission to the Bar; they built the law school; they appoint the professors, they appoint the examiners; and when a young man or young woman has passed the examinations satisfactorily, that body calls to the Bar. Then some Bencher presents the successful candidate to a judge in court, as having been called to the Bar by the Law Society of Upper Canada: and thereafter he or she must be recognized by every judge in the Province of Ontario. Since 1797 no court in the Providence of Ontario has heard or has. any power to hear anybody as a counsel or barrister unless he has been called to the Bar of Ontario by the Law Society of Upper Canada.

In addition to our barristers, we have also what are called solicitors, but ours is not entirely like the English system. Nearly all our barristers are solicitors; practically all our solicitors are barristers. A young man will study law, and prepare himself for the examinations, and then when he has passed the proper examinations he gets a certificate of fitness from the Law Society; and upon that being presented to the court, the court admits him as a solicitor or, as you would call it, an

The Law Society of Upper Canada has full jurisdiction in the way of discipline over all members of the Bar; and it is exercised very freely—so that I may say, without undue self-laudation, we have a very respectable Bar in the Province of Ontario.

attornev.

Ontario's Unified Court

Now, as to the Bench. As at present constituted, we have one supreme court, the Supreme Court of Ontario, which has

full jurisdiction, criminal and civil, equitable and legal, over all classes of cases, from the most trifling crime to the most serious crime, and from the most trivial civil claim to the most important. In practice the inferior crimes, practically all except those which are punishable with death—this statement is not literally accurate, but is substantially so—are tried by the inferior courts and, similarly, any civil case involving up to say five hundred dollars, is brought, as a rule, in one of the inferior courts.

Each county or union of counties has its own County Court of limited civil jurisdiction; and it has its own Court of General Sessions of the Peace of criminal jurisdiction. And then there are Division Courts corresponding to your magistrates' courts in the United States, which deal with cases running up to \$100. These are presided over by county court judges.

All appeals go to a branch of the Supreme Court of Ontario. The Supreme Court of the Province of Ontario has two branches—one is the High Court Division, a trial branch for the hearing and trial of cases; the other is the Appellate Division, which hears all appeals. But every judge of the Supreme Court has the same power and jurisdiction as any other; any judge may try legal or equitable issues, civil or criminal cases or sit on the hearing of an appeal from any judicial brother. Appellate Court consists normally of five members, but four constitute a quorum (except in criminal appeals). We have only one Court of Appeal for the Province of Ontario. From the Court of Appeal of the Province of Ontario a very few cases are taken to the Supreme Court of Canada, and a smaller number of cases, perhaps not one per cent, taken over to the Privy Council in England — cases small in number, although important in substance.

The practice in the Division Court is very simple indeed. It is laid down by a Board of County Court Judges, subject to the supervision of the Supreme Court Judges. The practice in the County Courts is, mutatis mutandis, the same as the practice in the Supreme Court. Ac-

cordingly the Justices of the Supreme Court have practical jurisdiction over all the practice in the courts of the Province of Ontario in civil cases. In criminal cases, the Dominion Parliament lays down the practice, and it is exceedingly simple in every particular. Hereinafter I shall speak of this in more detail.

Rule-Making Power

Let me speak first of the practice in civil matters. While in early days the legislature occasionally passed practice statutes of more or less significance, even then the rules and practice were largely in the hands of the judges themselves. For nearly forty years the legislature has not interfered, but left them wholly to the judiciary.

Speaking from observation and some experience, I would say that the plan of allowing the judges full control over the practice of the courts works admirably. It is flexible, easily altered or adjusted to meet new conditions and eminently conducive to speedy justice. If a rule works badly it can be changed without delay; if an exigency arises it can be met at once.

Again speaking from observance and experience, the end and aim of the rules of practice have been to give every litigant his rights irrespective of slips and mistakes, and dependent wholly upon the facts of each case without regard to technicality, or to legal astuteness or cunning. We do not regard the courts as merely a forum for the academic discussion of abstruse principles or simply a machinery for elaborating a complete or logical and advanced theory of law, but as a business institution to give the people seeking their aid the rights which facts entitle them to, and that with a minimum of time and money. We are a poor and a busy people, we cannot afford to waste either time or money.

Civil Practice

In civil cases in the Supreme Court and the County Court, there are two ways of bringing a matter before the court for adjudication. One is by what we call an Originating Notice. That is where the rights of parties depend upon a will or a contract, or any document in writing. In that case, instead of issuing a writ of summons according to the regular practice, some person interested in the determination of that question serves a notice of motion upon the other parties interested and moves it before a judge sitting in Court; the judges sit in court practically continuously, so that there is no difficulty in determining without delay the rights of parties under such a document. This proceeding may be taken before any dispute has arisen concerning the writing in order to prevent any future difficulty. I read the rules:

600. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee, next-of-kin or heir-at-law of a deceased person, or as cestui que trust under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply by originating notice for the determination without an administration of the estate or trust of any of the following questions or matters:

(a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin or heir-at-

law, or cestui que trust.

(b) The ascertainment of any class of creditors, legatees, devisees, next-of-kin or others.

(c) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching (where necessary) of such accounts.

(d) The payment into the court of any money in the hands of the executors or

administrators or trustees.

(e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.

(f) The approval of any sale, purchase.

compromise or other transaction.

(g) The opinion, advice or direction of a judge pursuant to the Trustee Act.

(h). The determination of any question arising in the administration of the estate or trust.

(i) The fixing of the compensation of any

executor, administrator or trustee.

603. (1) Where any person claims to be the owner of the land, but does not desire to have his title thereto quieted under the Quieting Titles Act, he may have any particular question which would arise upon an application to have his title quieted determined upon an originating notice.

604. Where the rights of any person depend upon the construction of any deed, will or other instrument, he may apply by

originating notice, upon notice to all persons concerned, to have his rights declared and determined.

605. (1) Where the rights of the parties depend:

(a) Upon the construction of any contract or agreement and there are no material facts in dispute.

(b) Upon undisputed facts and the

proper inference from such facts.

Such rights may be determined upon originating notice.

(2) A contract or agreement may be construed before there has been a breach thereof.

Where the motion is heard by the Judge,

Rule 606 directs as follows:

- 606. (1) The Judge may summarily dispose of the questions arising on an originating notice and give such judgment as the nature of the case may require, or may give such directions as he may think proper for the trial of any questions arising upon the application.
- (2) Any special direction, touching the carriage or execution of the judgment or order or the service thereof upon persons not parties may be given as may be deemed proper.

A very great many contested and contentious questions are thus disposed of.

But the regular way of getting a matter before the court is by the issue of a writ of summons. This writ of summons is issued by the plaintiff or plaintiffs, as the case may be, and served upon those against whom a claim is made, the writ being endorsed with the cause of action. We have two kinds of endorsements. One kind, the special endorsement, is employed where the plaintiff seeks to recover a debt or liquidated damages in money and in a few other cases.

Rule 33 provides as follows:

33. (1) The writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, where the plaintiff seeks to recover a debt or liquidated demand in money (with or without interest, and whether the interest be payable by way of damages or otherwise), arising:

(a) Upon a contract, express or implied (as for instance on a bill of exchange, promissory note, cheque, or other simple contract

debt); or

(b) On a bond or contract under seal for payment of a liquidated demand; or

(c) On a statute where the amount sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(d) On a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated

demand; or

(e) On a trust: and also

(f) In actions for the recovery of land (with or without a claim for rent or mesne profits); and

(g) In actions for the recovery of

chattels.

(h) In actions for foreclosure or sale.

When a writ, being specially endorsed. is served upon the defendant, the defendant, if he wishes to defend, must not only file an appearance, but with his appearance he must file an affidavit setting out that he has a good defence on the merits and also stating the grounds of his defence; if these grounds are not sufficient they can be struck out and judgment may be entered forthwith. If the alleged facts set out in the affidavit be sufficient to constitute a defence, then the matter goes down to trial, as in other actions; the endorsement upon the writ and the affidavit may, if the plaintiff so desires, constitute the pleadings—there is no necessity for any more pleadings than these with a specially endorsed writ, but the plaintiff may, if he prefers, proceed as in other cases.

If the defendant, served with a specially endorsed writ, does not enter an appearance, final judgment may be entered; if he files an appearance with the proper affidavit he may be examined as in other actions—the practice of examination will be explained later.

In the case of a mortgage and some other particular forms of action, there are also special methods of procedure that I need not dwell on.

In an action in which the writ is not specially endorsed the defendant enters an appearance but he does not put in an affidavit. A statement of claim is served by the plaintiff and in due time a statement of defence is served by the defendant. These statements of claim are simple statements in ordinary language of the facts upon which the plaintiff relies to entitle him to the judgment which he claims—not conclusions of law. So, in the statement of defence, the defendant sets out the facts upon which he relies to constitute a defence to the action, not conclusions of law. If he wishes to admit anything stated by the plaintiff he may admit it: if he does not admit any statement, it is taken as denied (in this differing from the English practice).

When the plaintiff sees the statement of defence, he may amend his statement of claim or file a reply. The defendant may amend his pleading, but no pleading is allowed after reply. The defendant may also, by way of counterclaim, set up any claim he may have against the plaintiff, whether sounding in damages or not; but the court may strike out the counterclaim if it be thought not convenient to try the issues at the same time.

We have also convenient methods of trying counterclaims by the defendant against the plaintiff and other persons—and also a third party proceeding to determine guaranty, relief over, etc.

Any party may move to strike out pleadings or for judgment on the pleadings, etc., but by reason of the simplicity of our pleadings this is not very often done.

Amendments of pleadings are allowed almost as of course, at any stage, even in the Appellate Division. Our rules in that regard are imperative, not permissive—"shall" not "may."

183. A proceeding shall not be defeated by any formal objection, but all necessary amendments shall be made, upon proper terms as to costs and otherwise, to secure the advancement of justice, the determining of the real matter in dispute, and the giving of judgment according to the very right and justice of the case.

184. Non-compliance with the Rules shall not render the writ or any act or proceeding void, but the same may be set aside, either wholly or in part as irregular, or may be amended, or otherwise dealt with, as may

seem just.

These amendments may be made in the proceedings before trial, they may be made at the trial, they may be made in the Appellate Division. Over and over again, in the Appellate Division in which I have the honor to sit, the objection has been taken, "The judgment does not follow the pleadings," and the answer made: "Very well; we will amend the pleadings to agree with the facts." There may be other facts which would require to be proved under the amended pleadings or other evidence which a party might desire to adduce. If so, we call the witnesses before us in the Appellate Division, and have them exam-

ined there; or sometimes facts are allowed to be proved on affidavit.

If the facts are all before the court, we have little care for the pleadings and we care nothing for the "state of the record." Everyone will remember the wail of the technical judge when amendments were suggested — "Think of the state of the record." We care so little about the record that, in a great many cases, the amendments which are ordered to be made are not made in fact.

There is some danger in that course sometimes, if the case is appealed to the Supreme Court of Canada, because the Supreme Court of Canada often looks at the pleadings rather more strictly than we do; I cannot say what is done in the Privy Council, because it is thirteen years since I practiced there.

Again sometimes there is a plea of res adjudicata; but we have no real difficulty in such a case because, if it is said that the judgment pleaded did not proceed upon the formal pleadings, but that the question that was really tried and disposed of was something different, we send for the original record and the original pleadings in that action; and we have the power to amend the pleadings at any time.

I know that sounds very terrible from the point of view of the pure lawyer, of one who thinks of nothing else but law; and indeed if the courts existed solely for the purpose of making good lawyers, pure lawyers' law, that might not be a wise method of procedure. I contend, however, that courts do not exist for the purpose of making good lawyers any more than a hospital exists for the purpose of making good doctors. If a medical student can learn to be a good doctor by attending the clinics in the hospital, well and good. In the same way, if a member of the bar may become a good lawyer by watching the proceedings in a court of justice, well and good. But the object of the court is to give the litigant his rights; and everything else must be secondary to that.

Proceeding now with our action at law. Every litigant must as of course, file an affidavit, setting out all the documents which he has in his possession, custody or control, having any bearing whatever upon the matters at issue in the action, or which have been in his possession, and stating when they were in his possession, and what has become of them; and he must produce these to the opposite party if the opposite party so demands. That we have found helps a very great deal in elucidating the facts of an action before it comes to trial.

Discovery

Then there is another very useful practice—a practice which puts an end to at least one-third, possibly one-half, of all the actions brought. When by the pleadings it has been made manifest what the issues are, which are to be tried, either party may serve upon the other a subpoena requiring him to appear before a Special Examiner (who is an officer of the court), and submit to examination upon all the matters which are to be in issue directly or indirectly in the action. The examination is taken in shorthand and extended; and it may be used at the trial by the person who examines—it cannot, however, be used by the person who is examined. If he wants to tell anything to the jury or the judge, he may go in the witness box and tell it.

That system of compelling parties to put their cards upon the table (so to speak) has helped wonderfully in diminishing the number of actions tried, and in simplifying the actions when they are tried. The admissions of the defendant on the examination for discovery are put in and that will perhaps reduce the matters in issue down to one or two simple facts; whereas otherwise, there might have been many facts to be proved.

In not a few cases the admissions of one or the other party show that there is no defence or no legal cause of action, as the case may be: the party conceiving himself entitled to judgment on admissions may move before a judge in court for such judgment as he thinks he is entitled to.

Now, suppose the pleadings are complete and the case is to be tried, when and how is it to be tried?

The judges of the Supreme Court, every six months, lay down circuits for each of

the judges in the High Court Division. Each county or union of counties has a county town, in which a court for the trial of actions is held, twice, four times, six times, eight times a year, according to the amount of business which is to be done. Some of the sittings are non-jury sittings, for the trial of actions without a jury. Others are jury sittings at which actions are tried by jury, and also actions without jury.

Let me premise my subsequent statements by saying that we have no Constitutional Limitations in the Province of Ontario. The very word "constitution" means something different in the United States from what it means in Canadian or British nomenclature. With you the "Constitution" is a written document, containing so many sentences, words and letters: every man may read it, it is written and Litera scripta manet. With us, the constitution means something quite different. The Constitution of Canada is the constitution of the British Empire, of the mother country, of England; it is the body of principles more or less well defined, upon which the people believe they should be governed. It is not something in black and white—you can talk about it, write about it, argue about it—but it is not a document for interpretation by court or lawyer. With you, to say that anything is "unconstitutional" is to say that it is illegal, however wise and beneficial: with us, to say anything is "unconstitutional" is to say that it is legal, legally binding, but unwise and improper.

Since we have no Constitutional Limitations, we can govern ourselves and do govern ourselves without any more regard to the "wisdom of the ancestors" than we think it deserves. And the legislature many years ago, passed an act placing it in most cases entirely in the hands of the judge whether a case should be tried with or without a jury.

Now, that sounds appalling! Think of that "Palladium of Liberty," the jury, being swept out of existence by the ruthless hand of a judge appointed for life, for whom the people cannot even vote, and whom they cannot displace—we have no

recall in our country. This is what happens:

Court Controls Jury

A party who wishes his case tried by a jury files a jury notice—the other side may move to strike it out. It will be struck out in Chambers, if the judge sitting in Chambers thinks it is a case that ought not to be tried by a jury upon the face of it. Usually, however, a different course is pursued and the matter is left to the trial judge: I go circuit, say, as I have done many times, and hope to do again. The Records containing the pleadings are laid before me; I go through the records one by one, and determine which, if any, of the cases for which a jury is asked should really be tried with a jury. Counsel may be heard; and, as a rule, in a very few minutes we have determined in which cases a jury is proper. In all the other cases the jury notices are struck out, and they are placed at the end of the list, with the cases to be tried without a jury. (This applies only to civil cases.)

There are still a very few cases where a party has the right of trial by jury.

Moreover, the judges have the power to strike out a jury at any stage in the case, until such time as the verdict of the jury has been accepted.

And, notwithstanding what may have been done by any other judge in the way of striking out a jury notice, and notwithstanding what the parties may desire, the trial judge may try any case with a jury which he thinks should be so tried.

There have been very strong grounds urged for the retention of the jury trial. Such a method is doubtless good in some cases. I cannot, however, agree with Thomas Jefferson in his view that cases ought to be tried by a jury in order to teach the juries and, therefore, the people at large, law. I do not think that the court is a place for teaching law at all. More than that, in 999 cases out of a thousand, in matters which actually arise in the life of a juryman, he does not need any law, or any rule of guidance except plain common sense and common honesty.

Such a knowledge of law as he can acquire by trying a case as a juryman, does not help the ordinary individual very much.

Moreover, I protest against teaching jurors or the body of the people anything at the expense of two litigants. It might be just if the country should pay the expense of the litigants and the lawyers; if business schools of that kind are needed they ought to be kept by the people, and not paid for by the litigants.

There are other objections against our system which might be urged. It may be that the people of a country have not come to that state in evolution or devolution. which ever you like—I am not concerned with the words—I mean such a state of sentiment as that they will approve of the trial of most cases by judges instead of by juries. There are some states, there are some places, Populist and otherwise, in which the people think they ought to have their cases tried by a jury, even though they are not or may not be tried so well by a jury. Now, if the people are not satisfied to have cases tried by a judge instead of by a jury, they ought to have them tried by a jury. The most important thing is to do justice and right between man and man, to do right and to do justice according to law. There is, however, the second thing, and not very far behind this in importance, which is that the parties shall believe they are getting justice; they shall believe that their case is being properly tried; they shall believe that justice has been done; they shall leave the court satisfied that such is the caseplacati, as Lord Finlay put it this morning.

Our people in Ontario have, through a course of evolution, come to the view that, after all, a jury is not necessary in most cases; they have come very much to the mind of the French-Canadians who, shortly after the conquest by British of our beautiful country in 1759-60, were never tired of expressing their wonder that their business-like, common-sense, fellow-colonist, the Englishman, preferred to leave his rights to the determination of

tailors and shoemakers rather than to that of his judges.

Special Findings

Even if a case is tried by a jury, in not one case in ten—I am quite within the mark—is the jury allowed to give a general verdict. What we do is this: We write out questions for them to answer in writing, as to the facts upon which we conceive the determination of the action will rest. For instance, in a negligence action, it would run something like this: 1. Was the accident in question caused by the negligence of the defendant? 2. If so, what was the negligence? Write out carefully and fully every act of negligence of which you find the defendant guilty, which caused or assisted to cause the accident. 3. Notwithstanding the negligence of the defendant, could the plaintiff by the exercise of reasonable care have avoided the accident? And then there may in some cases be a number of other questions; and in any case the jury find damages. A jury is not allowed to give a general verdict—they have nothing to do with the costs—they answer the questions put to them and these only. judge accepts the findings of fact and enters the judgment which the answers to these questions entitled the parties to i. e., not according to his own view of the facts, but according to the facts as found by the jury. If the judge is not satisfied with the finding of the jury, he has no power to order a new trial; an appeal must be made to the Appellate Division. Sometimes the findings of a jury are so outrageous that they ought not to be allowed to stand; but the trial judge has no power to set them aside; that is one of the functions of the Appellate Division.

The result is there is not one case in one hundred in which there is a general verdict by a jury, except in cases of slander or something of that sort.

The percentage of cases tried by a jury is constantly diminishing—the last time I had occasion to look into the matter at all closely, I found that about 20 per cent were so tried in the Supreme Court, about

15 per cent in the County Court and not one-fifth of one per cent in the Division Court. While technically there is an appeal from the action of a trial judge in striking out the jury, I have, in more than thirty years' experience, known of only two appeals being actually taken on this ground, both of them unsuccessful—I know of one case, however, in which an appeal taken on other grounds succeeded, and the Appellate Court directed the jury notice to be restored.

In an address before the Illinois Bar Association, May 28, 1914, I used the following language in reference to our practice:

"The saving of time — and wind — is The opening and closing enormous. speeches of counsel to the jury and the charge of the judge are done away with; in argument there are very few judges who care to be addressed like a public meeting and quite as few who are influenced by mere oratory—all indeed must ex officio be patient with the tedious and suffer fools gladly. Vehement assertion, gross personal attacks on witnesses or parties, invective, appeal to the lower part of our nature, are all at a discount; and in most cases justice is better attained, rights according to law are better ensured. Moreover, during the course of a trial a very great deal of time is not uncommonly wasted in petty objections to evidence, in dwelling upon minor and almost irrelevant matters which may influence the jury, wearisome cross-examination and reiteration, etc., all of which are minimized before a judge."

Simple Court Organization

As regards appeals, we have not two courts, as you have in most of your states. Our Supreme Court of Ontario is, in one of its Divisions; the Trial Court, and in the other of its Divisions, the Appellate Court; and any one of the judges of the Supreme Court may sit in either Division. Today a judge may be sitting in the Appellate Court—presiding, for that matter, in the Appellate Court; tomorrow he may be trying a damage action, and the next day a murder action. Any judge, whether

chief or puisne justice of the Supreme Court, has precisely the same function as any other judge.

There being only the one court, there is no necessity for any formal proceeding to bring the matter up to the Appellate Division. The appellant brings up the record used at the trial: that record is brought up in all its hideous irregularities, if you will, all blotched over with amendments. That is brought up and placed before us—a typewritten copy of all the oral proceedings at the trial is furnished to each of the judges—the original documents are brought up and placed before us. We are precisely in the same position as the trial judge, so far as the written documents are concerned. have the disadvantage of not seeing and hearing the witnesses; but the trial judge, as a rule, where his finding depends upon the credibility of the witnesses, expresses his opinion; and while we are not bound by his findings, we have it for our guidance.

An appeal must be brought within thirty days after the trial.

If a case is too long on the list, it is a common practice for the Appellate Division to send for counsel and ask why the case is not heard, brought on for argument. In general, if an appeal is not heard within three months of the trial, there is something wrong somewhere; and if a case is not tried within six months of the writ being served, there is something wrong.

Of course, witnesses will die, and accidents will happen—witnesses will leave the country. These are particular instances; but, speaking generally, a case ought to be tried within six months after the action is brought, and it ought to be through the Court of Appeal, and the whole action finally settled within a year.

I shall give you a concrete example. In the very first case that I tried when I was raised to the Bench thirteen years ago, which went to the Privy Council, the writ was issued in April in one year: it went through the trial court, through the Appellate Courts and the Judicial Committee of the Privy Council in Westminster, and was disposed of in June of the following year. That is fifteen months to go through the trial court, the Appeal Court, the Supreme Court of Canada, and the Judicial Committee of the Privy Council.

I do not wish you to understand, or to think that I am trying to give you the impression, that we are marvellously clever in Canada; but this I do urge upon you:

We are a poor people, we are a busy people, we have a big country to develop, we are developing and we must develop it with considerable rapidity. We have no time to waste in technicality in pleadings and such like—we try to save both time and money for all litigants, and to give them their rights and dues within as short a time as possible. As we do not sell, neither do we delay justice.

It is not altogether the practice alone that makes a difference—give me even a complicated practice, with a judiciary possessing the instinct of right and justice and the desire to do business and get on with the work, and I will give you a court which will do a great deal better than a court with the very finest practice, the most modern improvements, but with the judges technical, insisting upon the letter rather than the spirit, form rather than substance, and more troubled about the importance of their position than they are about the importance of the litigant getting his rights.

But there can be no doubt that a simple non-technical and flexible practice makes for justice; and other things being equal it is more advantageous for the people at large, the litigant, the lawyer and the judge himself than the technical, intricate, refined practice which prevails in some jurisdictions which is more concerned with the way in which the lawyer puts things on paper than with the litigant having his rights according to the facts.

Criminal Procedure

I may be permitted to repeat here what I said to the New York State Bar Association, January 20, 1912:

"At the conquest Canada by the Brit-

ish, 1759-60, the English criminal law, both substantive and adjective, was introduced by the conquerors, although (with the exception of a few years) the French-Canadians were permitted to retain their own law in civil matters. The English criminal law continued to prevail except as modified by provincial statutes - and these statutes in general closely followed the legislation in the mother country. This statement also applies generally to the Province of Nova Scotia and New Accordingly, at confedera-Brunswick. tion in 1867 the criminal law of all the confederating colonies was almost identical—while the civil law of Lower Canada (Quebec) was markedly different from that of Upper Canada (Ontario), Nova Scotia and New Brunswick, the Lower Canadian law being based upon the Custom of Paris and ultimately upon the civil law of Rome; while that of the others was based upon that of the common law of England. The British North America Act, which created (1867) the Dominion of Canada, gave to the Parliament of the Dominion jurisdiction over the criminal law, including the procedure in criminal The provinces, however, retained jurisdiction over the constitution of the Courts of Criminal Jurisdiction.

"For some years there were statutes passed from time to time amending the criminal law; and at length Sir John Thompson who had been himself a judge in Nova Scotia, and was Minister of Justice of Canada, brought about a codification of criminal law and procedure. He received valuable assistance from lawyers on both sides of the House; and the Criminal Code of 1892 became law. This with a few amendments made from time to time is still in force.

"The distinction between felony and misdemeanor has been abolished, and offences which are the subject of indictments are 'indictable offences.' Offences not the subject of an indictment are called 'offences' simply.' Certain offences of a minor character are triable before one or two justices of the peace as provided by the Code in each case. In such cases there is an appeal from a magistrate's decision

adverse to the accused to the County Court judge both on law and fact; or the conviction may be brought up to the Appellate Division of the Supreme Court on matter of law.

"Cases triable before justices of the peace are (for example) resisting the execution of certain warrants, persuading or assisting an enlisted man to desert, challenging to fight a prize-fight or fighting one, or being present thereat, carrying pistols, selling pistols or air guns to minors under 16, pointing pistols, stealing shrubs of small value, injuring Indian graves, buying junk from children under 16, etc.

"But offences of a higher degree are

indictable.

"If a crime, say of theft, is charged against any one, upon information before a justice of the peace, a summons or warrant is issued—and the accused brought before the justice of the peace. In some cases he is arrested and brought before the magistrate without summons or warrant; but then an information is drawn up and sworn to. The justices of the peace are appointed by the Provincial Government and are not, as a rule, lawyers.

"Upon appearance before the justice of the peace, he proceeds to inquire into the matters charged against the accused; he causes witnesses to be summoned, and hears in presence of the accused all that is adduced. The accused has the fullest right of having counsel and of cross-examination, as well as of producing any witness, and having such evidence heard in his behalf as he can procure. All the depositions are taken down in shorthand or otherwise, and if in long hand, signed by the deponent after being read over to him.

"After all the evidence for the prosecution is in, the magistrate may allow argument, or he may proprio motu hold that no case has been made out—in which case the accused is discharged—or he may read over aloud all the evidence again (unless the accused, expressly dispenses with such reading), and address the accused, warning him that he is not obliged to say anything, but that anything he does say will be taken down and may be given in evi-

dence against him at his trial, and ask 'Having heard the evidence, do you wish to say anything in answer to the charge?' Then if desired by the accused, the defence evidence is called.

"If at the close of the evidence the magistrate is of opinion no case is made out, he discharges the prisoner, but the accused may demand that he (the accuser) be bound over to prefer an indictment at the court at which the accused would have been tried if the magistrate had committed him.

"If a case is made out, the accused is committed for trial with or without bail, as seems just, the witnesses being bound over to give evidence.

"Police magistrates are appointed for most cities and towns, who are generally barristers; these have a rather higher jurisdiction than the ordinary justice of the peace; in some cases with the consent of the accused.

"The courts which proceed by indictment are the Supreme Court of the Province and the General Sessions.

"The Supreme Court can try any indictable offence; the Sessions cannot try treason and treasonable offences, taking, etc., oaths to commit crime, piracy, corruption of officers, etc., murder, attempts and threats to murder, rape, libel, combinations in restraint of trade, bribery, personation, etc., under the Dominion Elections Act.

"Within twenty-four hours of committal to gaol of any person charged with any offence which the Sessions could try, the Sheriff must notify the County Court judge (who acts as judge in the Sessions) and with as little delay as possible the accused is brought before the judge. The judge reads the depositions, and tells the prisoner what he is charged with and that he has the option of being tried forthwith before him without a jury or being tried by a jury. If the former course is chosen, a simple charge is drawn up, a day fixed for the trial and the case then disposed of.

"If a jury be chosen, at the Sessions or the Supreme Court (Criminal Assizes), a bill of indictment is laid before a grand jury (in Ontario of thirteen persons) by a barrister appointed by the Provincial Government for that purpose. The indictment may be in popular language without technical averment, it may describe the offence in the language of the statute or in any words sufficient to give the accused notice of the offence with which he is charged. Forms are given in the statute which may be followed. Here is a sample:

"The Jurors of Our Lord the King present that John Smith murdered Henry Jones at Toronto on February 13th, A. D. 1912."

"No bill can be laid before the grand jury by the crown counsel (without the leave of the court) for any offences except such as are disclosed in the depositions before the magistrate; but sometimes the court will allow or even direct other indictments to be laid.

"The grand jury has no power to cause any indictment to be drawn up.

"We do not allow an examination of the proceedings before the grand jury—there is no practice of quashing indictments for irregularities before the grand jury, insufficiency of evidence or the like. The grand jury is master in its own house; it may call for the assistance of the crown counsel or proceed with investigations without him, and no shorthand or other notes are taken of the proceedings, the grand jurymen are sworn to keep 'the king's secrets, your fellow's and your own.'

"Upon a true bill being found, the accused is arraigned; if he pleads 'not guilty' the trial proceeds.

"He has twenty peremptory challenges in capital cases; twelve if for an offence punishable with more than five years' imprisonment, and four in all other cases—the crown has four, but may cause any number to stand aside until all the jurors have been called.

Rational Jury Procedure

"I have never, in thirty years' experience, seen it take more than half an hour to get a jury even in a murder case—and I have never but once heard a juryman asked a question.

"In case of conviction, the prisoner may

ask a case upon any question of law to be reserved for the Appellate Division or the judge may do that proprio motu. The Appellate Division may also direct a new trial upon the ground that the verdict is against evidence; but I have never known that to be done.

"No conviction can be set aside or new trial ordered even though some evidence was improperly admitted or rejected, or something was done at the trial not according to law or some misdirection given, unless, in the opinion of the Appellate Division some substantial wrong or miscarriage was thereby occasioned at the trial. If the Appellate Division is unanimous against the prisoner, there is no further appeal; but if the court is divided, a further appeal may be taken to the Supreme Court of Canada. I have never known this to be done but once.

"A wife or husband is a competent witness in all cases for an accused. He or she is compellable as a witness for the prosecution in offences against morality, seduction, neglect of those in one's charge and many others. The accused is also competent, but not compellable in all cases. If an accused does not testify in his own behalf, no comment can be made upon the fact by prosecuting counsel or the judge.

"No more than five experts are allowed on each side.

"I have never known a murder case (except one) take four days—most do not take two, even with medical experts."

And if a murderer is not hanged within a year of his deed he may properly complain of being deprived of his rights under Magna Charta—"We shall not delay justice" was the king's promise.

I venture to hope that some of my brother judges in this great Republic may derive some benefit from what I have said.

Let me repeat, I am not a missionary nor do I urge any change in any system of practice but my own—I only state facts as they are within my knowledge in the hope that they may not be wholly without benefit to others.

I cannot close without expressing my

gratitude for the illuminating judgments of many of the judges of the United States and state courts which have cast a ray of light over many a dark path and assisted us Canadian judges to do justice according to law.

And I feel deeply the cordiality with which you have received me and my message—I am wholly confident that you and we must remain in friendship and harmony as our countries have for more than a century—and that our sympathy with and affection for each other must increase as we know each other better.

Juristic Center Movement

There has been a very encouraging activity in respect to the proposed "juristic center" since it was reported on in the April number of this JOURNAL. A committee of which Mr. Elihu Root is chairman, and Dr. William Draper Lewis is secretary, has been formed, and a survey is being made looking to a report within a few months. The idea is receiving the support and encouragement of a number of leaders of the bar, teachers of law, and judges.

The purpose is to modernize the law and render a great service to the nation. It will take several forms, chief of which will be the restatement of portions of the law in which uncertainty or complexity abound. A restatement based upon the work of recognized authorities will doubtless go far to influence judicial opinion. There is reason also for presuming that the tremendous importance of improving the administration of the law will be included in the scope of the institute's activities.

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An Efficient Criminal Court

Detroit's Unified Court Reports on Second Year's Results—Hopes of Criminals, Shysters and Demagogues Centered on Election of Judges in 1923

The reduction of major crimes by fifty-eight per cent in the year 1921 in Detroit constitutes the most significant and most encouraging fact at a time when public attention throughout the country is centered on law enforcement. Dr. James W. Inches, Commissioner of Police, has built up a very efficient police force. Paul Voorhies, the prosecuting attorney for Wayne county, is experienced and efficient and entirely in sympathy with the campaign against crime. Detroit's new unified criminal court has afforded the needed tribunal to make the work of the prosecutor and the police effective.

The publication of the second annual report of the court, for the year ending April 20, 1922, affords reason for further

consideration of its work.

The court is properly known as the Recorder's Court. Under an act of 1919 this court absorbed the police court and two additional judges were appointed, making a staff of seven judges. The reorganized court began service on April 20, 1920. The act provided for the selection by the judges of a chief judge to exercise general administrative powers, chief of which were the classification of calendars and the assignment of judges. It provided also for the establishment of a psychopathic clinic. The law was ratified by the voters of Detroit by a vote of six to one.

Under the old dispensation professional criminals were seldom seriously punished. The three independent Police Court judges tried misdemeanor cases. When an experienced criminal was convicted he appealed to the Recorder's Court and furnished bail. If his case ever reached trial it was weeks or months later and convictions were rare. The delay enabled the defense to buy off or intimidate the people's witnesses or, if necessary, the bail

was jumped and the surety was often found to be uncollectible. Only the helpless, the mentally defective and the very poor had reason to fear the Police Court.

In felony cases like delays were inevitable. Preliminary examination was had in the Police Court and bail was given for appearance in the Recorder's Court. A comparison of results under the old and new methods is afforded by the following extract from the report referred to:

Expeditious Disposition of Cases

Delay in the trial and disposition of cases defeats the ends of justice, both in its effects upon the innocently accused as well as upon the guilty.

The court has kept abreast of its cases, disposing of them as rapidly as they could be prepared for trial. Continuances for any but legitimate reasons were discouraged by being denied.

As a result of this policy, 66% of the felony cases brought into the court during the year were tried within seven days after the arraignment of the defendant.

The promptness with which felony cases are brought to trial is shown by the following analysis of 3338 cases that were tried

in the year under consideration.

These figures show that at the end of 28 days the present court disposed of 84% of the cases after arraignment on a warrant, while under the old organization in 1919 only 15% were disposed of within 28 days. By the end of 65 days, 98% were disposed of in 1921, while in 1919, 59% were disposed of within the same period. In other words, in 1921, only 2% of the cases analyzed were in court over 65 days—in 1919, 41% of felonies were in court over 65 days before being disposed of.

The benefits of the unified court are particularly apparent in those cases where the defendant pleads guilty to a felony upon ar-

raignment on a warrant.

The records show that of the 3338 cases analyzed, 1539 or 46% were such cases, and accordingly were disposed of the same day that the arraignment on the warrant was made. Under the old dual court system this would have been impossible because, even after a plea of guilty to a felony upon arraignment in the Police Court, the defendant would be bound over for disposition during the succeeding term of the Recorder's Court.

Promptness in disposing of cases is re-

THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE IN THE PROVINCE OF ONTARIO.

RY

THE HONORABLE WILLIAM RENWICK RIDDELL, LL. D., ETC.,
JUSTICE OF THE SUPREME COURT OF ONTARIO.

(Presented at the meeting of the Judicial Section of the American Bar Association, at Boston, Mass., September 3, 4, 5, 1919.)

[Upon receiving the invitation to address this Section of the American Bar Association, I prepared a paper on the above subject; but on conversing with a number of my American judicial brethren, I found that certain matters which I thought commonplace were really of much interest to them and vice versa. I therefore addressed the Section extempore—this paper contains the substance of my remarks, together with certain information brought out by questions sent to me by members of the Association.]

I feel particularly flattered by the invitation given me to address the Judicial Section of the American Bar Association, and equally, if not more so, by the request that I should speak of the judiciary of my own province. I accept in no missionary spirit but in that of fraternity and comradeship—I do not say or suggest that our methods are the better; but I do urge that as you and we and all the English-speaking peoples are one in essence, one in the feeling for justice and law, for the determination of rights on principle and not by the whim and caprice of judge or lord, so each branch of these imperial peoples may benefit by the consideration of how another has attempted to solve problems which are common to all and of the success obtained in the endeavor.

For more than a century our province has been permitted to develop its legal system in its own way, without interference on the part of the mother country, or any other.

For the two years after its organization, the Province of Upper Canada (now Ontario) had four Districts, and in each District a Court of Common Pleas, with full civil jurisdiction in the District. The English civil law having been introduced in 1792 by the first Act of the first Parliament of the province, it was early determined to introduce the English system of courts. Accordingly in 1794, an act was passed creating a common law court,

the Court of King's Bench, with full jurisdiction, civil and criminal, throughout the province and having its seat at the capital. That court was in 1837 and 1849 supplemented by a Court of Chancery and in 1849 by a Court of Common Pleas (with the same power and jurisdiction as the Court of King's Bench). These three were in 1881 combined with the Court of Appeal into a Supreme Court of Judicature now the Supreme Court of Ontario, with full jurisdiction, legal and equitable, civil and criminal.

First, however, I shall speak to you of the Bar; because, according to our system, no man can be a Judge of the Supreme Court of Ontario unless he has been at least ten years at the Bar of Ontario—he cannot be a Judge of the inferior courts unless he has been a member of the Bar of Ontario for at least seven years. In our country, no layman tries any case, no matter how small—a case involving five cents is tried by a Judge who has been appointed a Judge by the Government of the Dominion of Canada for life, and who has been at least seven years at the Bar of Ontario.

The Bar is a self-governing body: the courts do not call to the Bar of Ontario. Every five years (at the present time) the barristers in Ontario cast a vote for thirty men whom they desire to be Benchers, as we call them. Those thirty men, together with some ex officio members constitute a body corresponding to the senate of a university and in some respects to a board of governors. They have entire charge of all matters relating to admission to the Bar; they built the law school; they appoint the professors, they appoint the examiners; and when a young man or young woman has passed the examinations satisfactorily, that body calls to the Bar. Then some Bencher presents the successful candidate to a judge in court, as having been called to the Bar by the Law Society of Upper Canada; and thereafter he or she must be recognized by every judge in the Province of Ontario. Since 1797 no court in the Province of Ontario has had or has any power to hear anybody as a counsel or barrister unless he has been called to the Bar of Ontario by the Law Society of Upper Canada.

In addition to our barristers, we have also what are called solicitors, but ours is not entirely like the English system.

Nearly all our barristers are solicitors; practically all our solicitors are barristers. A young man will study law, and prepare himself for the examinations, and then when he has passed the proper examinations he gets a certificate of fitness from the Law Society; and upon that being presented to the court, the court admits him as a solicitor or, as you would call it, an attorney.

The Law Society of Upper Canada has full jurisdiction in the way of discipline over all members of the Bar; and it is exercised very freely—so that I may say, without undue selflaudation, we have a very respectable Bar in the Province of Ontario.

Now, as to the Bench. As at present constituted, we have one supreme court, the Supreme Court of Ontario, which has full jurisdiction, criminal and civil, equitable and legal, over all classes of cases, from the most trifling crime to the most serious crime, and from the most trivial civil claim to the most important. In practice the inferior crimes, practically all except those which are punishable with death—this statement is not literally accurate but is substantially so—are tried by the inferior courts, and, similarly, any civil case involving up to say five hundred dollars is brought as a rule in one of the inferior courts.

Each county or union of counties has its own County Court of limited civil jurisdiction; and it has its own Court of General Sessions of the Peace of criminal jurisdiction. And then there are Division Courts corresponding to your magistrates' courts in the United States, which deal with cases running up to \$100. These are presided over by county court judges.

All appeals go to a branch of the Supreme Court of Ontario. The Supreme Court of the Province of Ontario has two branches—one is the High Court Division, a trial branch for the hearing and trial of cases; the other is the Appellate Division, which hears all appeals. But every judge of the Supreme Court has the same power and jurisdiction as any other; any judge may try legal or equitable issues, civil or criminal cases or sit on the hearing of an appeal from any judicial brother. An Appellate Court consists normally of five members but four constitute a quorum (except in criminal appeals). We have only one Court of Appeal for the Province of Ontario. From the

Court of Appeal of the Province of Ontario a very few cases are taken to the Supreme Court of Canada, and a smaller number of cases, perhaps not one per cent, taken over to the Privy Council in England—cases small in number although important in substance.

The practice in the Division Court is very simple indeed. It is laid down by a Board of County Court Judges, subject to the supervision of the Supreme Court Judges. The practice in the County Courts is, mutatis mutandis, the same as the practice in the Supreme Court. Accordingly the Justices of the Supreme Court have practical jurisdiction over all the practice in the courts of the Province of Ontario in civil cases. In criminal cases, the Dominion Parliament lays down the practice, and it is exceedingly simple in every particular. Hereinafter I shall speak of this in more detail.

Let me speak first of the practice in civil matters. While in early days the legislature occasionally passed practice statutes of more or less significance, even then the rules and practice were largely in the hands of the judges themselves. For nearly forty years the legislature has not interfered but left them wholly to the judiciary.

Speaking from observation and some experience, I would say that the plan of allowing the judges full control over the practice of the courts works admirably. It is flexible, easily altered or adjusted to meet new conditions and eminently conducive to speedy justice. If a rule works badly it can be changed without delay: if an exigency arises it can be met at once.

Again speaking from observance and experience, the end and aim of the rules of practice have been to give every litigant his rights irrespective of slips and mistakes, and dependent wholly upon the facts of each case without regard to technicality, or to legal astuteness or cunning. We do not regard the courts as merely a forum for the academic discussion of abstruse principles or simply a machinery for elaborating a complete or logical and advanced theory of law, but as a business institution to give the people seeking their aid the rights which facts entitle them to, and that with a minimum of time and money. We are a poor and a busy people, we cannot afford to waste either time or money.

CIVIL PRACTICE.

In civil cases in the Supreme Court and the County Court, there are two ways of bringing a matter before the court for adjudication. One is by what we call an Originating Notice. That is where the rights of parties depend upon a will or a contract, or any document in writing. In that case, instead of issuing a writ of summons according to the regular practice, some person interested in the determination of that question serves a notice of motion upon the other parties interested and moves it before a judge sitting in Court; the judges sit in court practically continuously, so that there is no difficulty in determining without delay the rights of parties under such a document. This proceeding may be taken before any dispute has arisen concerning the writing in order to prevent any future difficulty. I read the rules:

"600. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, or any person claiming to be interested in the relief sought as creditor, devisee, legatee, next-of-kin or heir-at-law of a deceased person, or as cestui que trust under the trusts of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may apply by originating notice for the determination without an administration of the estate or trust of any of the following questions or matters:

- (a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin or heir-at-law, or cestui que trust.
- (b) The ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others.
- (c) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching (where necessary) of such accounts.
- (d) The payment into the court of any money in the hands of the executors or administrators or trustees.
- (e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees.
- (f) The approval of any sale, purchase, compromise or other transaction.
- (g) The opinion, advice or direction of a judge pursuant to the Trustee Act.

(h) The determination of any question arising in the administration of the estate or trust.

(i) The fixing of the compensation of any executor, admin-

istrator or trustee.

"603. (1) Where any person claims to be the owner of the land, but does not desire to have his title thereto quieted under the Quieting Titles Act, he may have any particular question which would arise upon an application to have his title quieted determined upon an originating notice.

"604. Where the rights of any person depend upon the construction of any deed, will or other instrument, he may apply by originating notice, upon notice to all persons concerned, to

have his rights declared and determined.

"605. (1) Where the rights of the parties depend:

(a) Upon the construction of any contract or agreement and there are no material facts in dispute.

(b) Upon undisputed facts and the proper inference from such

facts.

"Such rights may be determined upon originating notice.

"(2) A contract or agreement may be construed before there has been a breach thereof."

Where the motion is heard by the Judge, Rule 606 directs as follows:

"606. (1) The Judge may summarily dispose of the questions arising on an originating notice and give such judgment as the nature of the case may require, or may give such directions as he may think proper for the trial of any questions arising upon the application.

"(2) Any special directions, touching the carriage or execution of the judgment or order or the service thereof upon persons

not parties, may be given as may be deemed proper."

A very great many contested and contentious questions are thus disposed of.

But the regular way of getting a matter before the court is by the issue of a writ of summons. This writ of summons is issued by the plaintiff or plaintiffs, as the case may be, and served upon those against whom a claim is made, the writ being endorsed with the cause of action. We have two kinds of endorsements. One kind, the special endorsement, is employed where the plaintiff seeks to recover a debt or liquidated damages in money and in a few other cases.

Rule 33 provides as follows:

"33. (1) The writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim,

where the plaintiff seeks to recover a debt or liquidated demand in money (with or without interest, and whether the interest be payable by way of damages or otherwise), arising:

(a) Upon a contract, express or implied (as for instance on a bill of exchange, promissory note, cheque, or other

simple contract debt): or

(b) On a bond or contract under seal for payment of a liquidated demand; or

(c) On a statute where the amount sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(d) On a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand; or

(e) On a trust; and also

(f) In actions for the recovery of land (with or without a claim for rent or mesne profits); and

(g) In actions for the recovery of chattels.

(h) In actions for foreclosure or sale."

When a writ, being specially endorsed, is served upon the defendant, the defendant if he wishes to defend must not only file an appearance, but with his appearance he must file an affidavit setting out that he has a good defence on the merits and also stating the grounds of his defence; if these grounds are not sufficient they can be struck out and judgment may be entered forthwith. If the alleged facts set out in the affidavit be sufficient to constitute a defence, then the matter goes down to trial, as in other actions: the endorsement upon the writ and the affidavit may if the plaintiff so desires, constitute the pleadings—there is no necessity for any more pleadings than these with a specially endorsed writ, but the plaintiff may, if he prefers, proceed as in other cases.

If the defendant, served with a specially endorsed writ does not enter an appearance, final judgment may be entered; if he files an appearance with the proper affidavit he may be examined as in other actions—the practice of examination will be explained later.

In the case of a mortgage and some other particular forms of action, there are also special methods of procedure that I need not dwell on.

In an action in which the writ is not specially endorsed the defendant enters an appearance but he does not put in an affi-

davit. A statement of claim is served by the plaintiff and in due time a statement of defence is served by the defendant. These statements of claim are simple statements in ordinary language of the facts upon which the plaintiff relies to entitle him to the judgment which he claims—not conclusions of law. So, in the statement of defence, the defendant sets out the facts upon which he relies to constitute a defence to the action, not conclusions of law. If he wishes to admit anything stated by the plaintiff he may admit it; if he does not admit any statement, it is taken as denied (in this differing from the English practice).

When the plaintiff sees the statement of defence, he may amend his statement of claim or file a reply. The defendant may amend his pleading, but no pleading is allowed after reply. The defendant may also, by way of counterclaim, set up any claim he may have against the plaintiff, whether sounding in damages or not: but the court may strike out the counterclaim if it be thought not convenient to try the issues at the same time.

We have also convenient methods of trying counterclaims by the defendant against the plaintiff and other persons—and also a third party proceedings to determine guaranty, relief over, etc.

Any party may move to strike out pleadings or for judgment on the pleadings, etc., but by reason of the simplicity of our pleadings this is not very often done.

Amendments of pleadings are allowed almost as of course at any stage even in the Appellate Division. Our rules in that regard are imperative not permissive—"shall" not "may."

"183. A proceeding shall not be defeated by any formal objection, but all necessary amendments shall be made, upon proper terms as to costs and otherwise, to secure the advancement of justice, the determining the real matter in dispute, and the giving of judgment according to the very right and justice of the case.

"184. Non-compliance with the Rules shall not render the writ or any act or proceeding void, but the same may be set aside, either wholly or in part as irregular, or may be amended, or otherwise dealt with, as may seem just."

These amendments may be made in the proceedings before trial, they may be made at the trial, they may be made in the Appellate Division. Over and over again, in the Appellate Division in which I have the honor to sit, the objection has been taken, "The judgment does not follow the pleadings," and the answer

made: "Very well; we will amend the pleadings to agree with the facts." There may be other facts which would require to be proved under the amended pleadings or other evidence which a party might desire to adduce. If so, we call the witnesses before us in the Appellate Division, and have them examined there; or sometimes facts are allowed to be proved on affidavit.

If the facts are all before the court, we have little care for the pleadings and we care nothing for the "state of the record." Everyone will remember the wail of the technical judge when amendments were suggested—"Think of the state of the record." We care so little about the record that, in a great many cases, the amendments which are ordered to be made are not made in fact.

There is some danger in that course sometimes, if the case is appealed to the Supreme Court of Canada, because the Supreme Court of Canada often looks at the pleadings rather more strictly than we do; I cannot say what is done in the Privy Council, because it is thirteen years since I practiced there.

Again sometimes there is a plea of res adjudicata; but we have no real difficulty in such a case, because, if it is said that the judgment pleaded did not proceed upon the formal pleadings, but that the question that was really tried and disposed of was something different, we send for the original record and the original pleadings in that action; and we have the power to amend the pleadings at any time.

I know that sounds very terrible from the point of view of the pure lawyer, of one who thinks of nothing else but law; and indeed if the courts existed solely for the purpose of making good lawyers, pure lawyers' law, that might not be a wise method of procedure. I contend, however, that courts do not exist for the purpose of making good lawyers any more than a hospital exists for the purpose of making good doctors. If a medical student can learn to be a good doctor by attending the clinics in the hospital, well and good. In the same way, if a member of the bar may become a good lawyer by watching the proceedings in a court of justice, well and good. But the object of the court is to give the litigant his rights; and everything else must be secondary to that.

Proceeding now with our action at law. Every litigant must, as of course, file an affidavit, setting out all the documents which

he has in his possession, custody or control, having any bearing whatever upon the matters at issue in the action, or which have been in his possession, and stating when they were in his possession, and what has become of them; and he must produce these to the opposite party if the opposite party so demands. That we have found helps a very great deal in elucidating the facts of an action before it comes to trial.

Then there is another very useful practice—a practice which puts an end to at least one-third, possibly one-half, of all the actions brought. When by the pleadings it has been made manifest what the issues are, which are to be tried, either party may serve upon the other a subpoena requiring him to appear before a Special Examiner (who is an officer of the court), and submit to examination upon all the matters which are to be in issue directly or indirectly in the action. The examination is taken in shorthand and extended; and it may be used at the trial by the person who examines—it cannot, however, be used by the person who is examined. If he wants to tell anything to the jury or the judge, he may go in the witness box and tell it.

That system of compelling parties to put their cards upon the table (so to speak) has helped wonderfully in diminishing the number of actions tried, and in simplifying the actions when they are tried. The admissions of the defendant on the examination for discovery are put in and that will perhaps reduce the matters in issue down to one or two simple facts; whereas, otherwise, there might have been many facts to be proved.

In not a few cases the admissions of one or the other party show that there is no defence or no legal cause of action as the case may be: the party conceiving himself entitled to judgment on admissions may move before a judge in court for such judgment as he thinks he is entitled to.

Now, suppose the pleadings are complete and the case is to be tried, when and how is it to be tried?

The judges of the Supreme Court, every six months, lay down circuits for each of the judges in the High Court Division. Each county or union of counties has a county town, in which a court for the trial of actions is held, twice, four times, six times, eight times a year, according to the amount of business which is to be done. Some of the sittings are non-jury sittings, for the trial of

actions without a jury. Others are jury sittings at which actions are tried by jury, and also actions without jury.

Let me premise my subsequent statements by saying that we have no Constitutional Limitations in the Province of Ontario. The very word "constitution" means something different in the United States from what it means in Canadian or British nomenclature. With you the "Constitution" is a written document, containing so many sentences, words and letters: every man may read it, it is written and Litera scripta manet. With us, the constitution means something quite different. The Constitution of Canada is the constitution of the British Empire, of the mother country, of England; it is the body of principles more or less well defined, upon which the people believe they should be governed. It is not something in black and white—you can talk about it, write about it, argue about it—but it is not a document for interpretation by court or lawyer. With you, to say that anything is "unconstitutional" is to say that it is illegal however wise and beneficial: with us, to say anything is "unconstitutional" is to say that it is legal, legally binding, but unwise and improper.

Since we have no Constitutional Limitations, we can govern ourselves and do govern ourselves without any more regard to the "wisdom of the ancestors" than we think it deserves. And the legislature many years ago, passed an act placing it in most cases entirely in the hands of the judge whether a case should be tried with or without a jury.

Now, that sounds appalling! Think of that "Palladium of Liberty," the jury, being swept out of existence by the ruthless hand of a judge appointed for life, for whom the people cannot even vote, and whom they cannot displace—we have no recall in our country. This is what happens:

A party who wishes his case tried by a jury files a jury notice—the other side may move to strike it out. It will be struck out in Chambers, if the judge sitting in Chambers thinks it is a case that ought not to be tried by a jury upon the face of it. Usually, however, a different course is pursued and the matter is left to the trial judge: I go circuit, say, as I have done many times, and hope to do again. The Records containing the pleadings are laid before me; I go through the records one by one, and

determine which, if any, of the cases for which a jury is asked should really be tried with a jury. Counsel may be heard; and as a rule in a very few minutes we have determined in which cases a jury is proper. In all the other cases, the jury notices are struck out, and they are placed at the end of the list, with the cases to be tried without a jury. (This applies only to civil cases.)

There are still a very few cases where a party has the right of trial by jury.

Moreover, the judges have the power to strike out a jury at any stage in the case, until such time as the verdict of the jury has been accepted.

And notwithstanding what may have been done by any other judge in the way of striking out a jury notice, and notwithstanding what the parties may desire, the trial judge may try any case with a jury which he thinks should be so tried.

There have been very strong grounds urged for the retention of the jury trial. Such a method is doubtless good in some cases. I cannot, however, agree with Thomas Jefferson in his view that cases ought to be tried by a jury in order to teach the juries and therefore the people at large, law. I do not think that the court is a place for teaching law at all. More than that, in 999 cases out of a thousand, in matters which actually arise in the life of a juryman, he does not need any law, or any rule of guidance except plain common sense and common honesty. Such a knowledge of law as he can acquire by trying a case as a juryman, does not help the ordinary individual very much.

Moreover, I protest against teaching jurors or the body of the people anything at the expense of two litigants. It might be just if the country should pay the expense of the litigants and the lawyers: if business schools of that kind are needed they ought to be kept by the people, and not paid for by the litigants.

There are other objections against our system which might be urged. It may be that the people of a country have not come to that state in evolution or devolution, whichever you like—I am not concerned with the words—I mean such a state of sentiment as that they will approve of the trial of most cases by judges instead of by juries. There are some states, there are some places, Populist, and otherwise, in which the people think they ought

to have their cases tried by a jury, even though they are not or may not be tried so well by a jury. Now, if the people are not satisfied to have cases tried by a judge instead of by a jury, they ought to have them tried by a jury. The most important thing is to do justice and right between man and man, to do right and to do justice according to law. There is, however, the second thing, and not very far behind this in importance, which is that the parties shall believe they are getting justice; they shall believe that their case is being properly tried; they shall believe that justice has been done; they shall leave the court satisfied that such is the case—placati, as Lord Finlay put it this morning.

Our people in Ontario have, through a course of evolution, come to the view that, after all, a jury is not necessary in most cases; they have come very much to the mind of the French-Canadians, who, shortly after the conquest by British of our beautiful country in 1759-60, were never tired of expressing their wonder that their businesslike, common-sense, fellow-colonist, the Englishman, preferred to leave his rights to the determination of tailors and shoemakers rather than to that of his judges.

Even if a case is tried by a jury, in not one case in ten—I am quite within the mark—is the jury allowed to give a general verdict. What we do is this: We write out questions for them to answer in writing, as to the facts upon which we conceive the determination of the action will rest. For instance, in a negligence action, it would run something like this: 1. Was the accident in question caused by the negligence of the defendant? 2. If so, what was the negligence? Write out carefully and fully every act of negligence of which you find the defendant guilty, which caused or assisted to cause the accident. 3. Notwithstanding the negligence of the defendant, could the plaintiff by the exercise of reasonable care have avoided the accident? And then there may in some cases be a number of other questions; and in any case the jury find damages. A jury is not allowed to give a general verdict—they have nothing to do with the costs—they answer the questions put to them and these only. The judge accepts the findings of fact and enters the judgment which the answers to these questions entitled the parties to—i. e., not according to his own view of the facts, but according to the facts as found by the jury. If the judge is not satisfied with the

finding of the jury, he has no power to order a new trial: an appeal must be made to the Appellate Division. Sometimes the findings of a jury are so outrageous that they ought not to be allowed to stand; but the trial judge has no power to set them aside; that is one of the functions of the Appellate Division.

The result is there is not one case in one hundred in which there is a general verdict by a jury, except in cases of slander or something of that sort.

The percentage of cases tried by a jury is constantly diminishing—the last time I had occasion to look into the matter at all closely, I found that about 20 per cent were so tried in the Supreme Court, about 15 per cent in the County Court and not one-fifth of one per cent in the Division Court. While technically there is an appeal from the action of a trial judge in striking out the jury, I have, in more than thirty years' experience, known of only two appeals being actually taken on this ground, both of them unsuccessful—I know of one case, however, in which an appeal taken on other grounds succeeded, and the Appellate Court directed the jury notice to be restored.

In an address before the Illinois Bar Association, May 28, 1914, I used the following language in reference to our practice:

"The saving of time—and wind—is enormous. The opening and closing speeches of counsel to the jury and the charge of the judge are done away with; in argument there are very few judges who care to be addressed like a public meeting and quite as few who are influenced by mere oratory—all indeed must ex officio be patient with the tedious and suffer fools gladly. Vehement assertion, gross personal attacks on witnesses or parties, invective, appeal to the lower part of our nature, are all at a discount; and in most cases justice is better attained, rights according to law are better ensured. Moreover during the course of a trial a very great deal of time is not uncommonly wasted in petty objections to evidence, in dwelling upon minor and almost irrelevant matters which may influence the jury, wearisome crossexamination and reiteration, etc., all of which are minimised before a judge."

As regards appeals, we have not two courts, as you have in most of your states. Our Supreme Court of Ontario is, in one of its Divisions, the Trial Court, and in the other of its Divisions, the Appellate Court; and any one of the judges of the Supreme Court

may sit in either Division. Today a judge may be sitting in the Appellate Court—presiding, for that matter, in the Appellate Court; tomorrow he may be trying a damage action, and the next day a murder action. Any judge whether chief or puisne justice of the Supreme Court has precisely the same function as any other judge.

There being only the one court, there is no necessity for any formal proceeding to bring the matter up to the Appellate Division. The appellant brings up the record used at the trial: that record is brought up in all its hideous irregularities, if you will, all blotched over with amendments. That is brought up and placed before us—a typewritten copy of all the oral proceedings at the trial is furnished to each of the judges—the original documents are brought up and placed before us. We are precisely in the same position as the trial judge, so far as the written documents are concerned. We have the disadvantage of not seeing and hearing the witnesses; but the trial judge as a rule where his finding depends upon the credibility of the witnesses expresses his opinion; and while we are not bound by his findings, we have it for our guidance.

An appeal must be brought within thirty days after the trial. If a case is too long on the list, it is a common practice for the Appellate Division to send for counsel and ask why the case is not heard, brought on for argument. In general, if an appeal is not heard within three months of the trial, there is something wrong somewhere; and if a case is not tried within six months of the writ being served, there is something wrong.

Of course, witnesses will die, and accidents will happen—witnesses will leave the country. These are particular instances; but speaking generally, a case ought to be tried within six months after the action is brought, and it ought to be through the Court of Appeal, and the whole action finally settled within a year.

I shall give you a concrete example. In the very first case that I tried when I was raised to the Bench thirteen years ago, which went to the Privy Council, the writ was issued in April in one year: it went through the trial court, through the Appellate Courts and the Judicial Committee of the Privy Council in Westminster, and was disposed of in June of the following year. That is fifteen months to go through the trial court, the

Appeal Court, the Supreme Court of Canada, and the Judicial Committee of the Privy Council.

I do not wish you to understand, or to think that I am trying to give you the impression, that we are marvellously clever in Canada; but this I do urge upon you:

We are a poor people, we are a busy people, we have a big country to develop, we are developing and we must develop it with considerable rapidity. We have no time to waste in technicality in pleadings and such like—we try to save both time and money for all litigants, and to give them their rights and dues within as short a time as possible. As we do not sell, neither do we delay justice.

It is not altogether the practice alone that makes a difference—give me even a complicated practice, with a judiciary possessing the instinct of right and justice and the desire to do business and get on with the work, and I will give you a court which will do a great deal better than a court with the very finest practice, the most modern improvements, but with the judges technical, insisting upon the letter rather than the spirit, form rather than substance, and more troubled about the importance of their position than they are about the importance of the litigant getting his rights.

But there can be no doubt that a simple non-technical and flexible practice makes for justice; and other things being equal it is more advantageous for the people at large, the litigant, the lawyer and the judge himself than the technical, intricate, refined practice which prevails in some jurisdictions which is more concerned with the way in which the lawyer puts things on paper than with the litigant having his rights according to the facts.

CRIMINAL PROCEDURE.

I may be permitted to repeat here what I said to the New York State Bar Association, January 20, 1912:

"At the conquest of Canada by the British, 1759-60, the English criminal law, both substantive and adjective, was introduced by the conquerors, although (with the exception of a few years) the French-Canadians were permitted to retain their own law in civil matters. The English criminal law continued to prevail except as modified by provincial statutes—and these statutes in general closely followed the legislation in the mother

country. This statement also applies generally to the Provinces of Nova Scotia and New Brunswick. Accordingly, at confederation in 1867 the criminal law of all the confederating colonies was almost identical—while the civil law of Lower Canada (Quebec) was markedly different from that of Upper Canada (Ontario), Nova Scotia and New Brunswick, the Lower Canadian law being based upon the Custom of Paris and ultimately upon the civil law of Rome; while that of the others was based upon that of the common law of England. The British North America Act, which created (1867) the Dominion of Canada, gave to the Parliament of the Dominion jurisdiction over the criminal law, including the procedure in criminal matters. The provinces, however, retained jurisdiction over the constitution of the Courts of Criminal Jurisdiction.

"For some years there were statutes passed from time to time amending the criminal law; and at length Sir John Thompson who had been himself a judge in Nova Scotia, and was Minister of Justice of Canada, brought about a codification of criminal law and procedure. He received valuable assistance from law-yers on both sides of the House; and the Criminal Code of 1892 became law. This with a few amendments made from time to

time is still in force.

"The distinction between felony and misdemeanor has been abolished, and offences which are the subject of indictments are indictable offences.' Offences not the subject of an indictment are called 'offences' simply. Certain offences of a minor character are triable before one or two justices of the peace as provided by the Code in each case. In such cases there is an appeal from a magistrate's decision adverse to the accused to the County Court judge both on law and fact; or the conviction may be brought up to the Appellate Division of the Supreme Court on matter of law.

"Cases triable before justices of the peace are (for example) resisting the execution of certain warrants, persuading or assisting an enlisted man to desert, challenging to fight a prize-fight or fighting one, or being present thereat, carrying pistols, selling pistols or air guns to minors under 16, pointing pistols, stealing shrubs of small value, injuring Indian graves, buying junk from children under 16, etc.

"But offences of a higher degree are indictable.

"If a crime, say of theft, is charged against any one, upon information before a justice of the peace, a summons or warrant is issued—and the accused brought before the justice of the peace. In some cases he is arrested and brought before the magistrate without summons or warrant; but then an information is drawn up and sworn to. The justices of the peace are appointed by the Provincial Government and are not, as a rule, lawyers.

"Upon appearance before the justice of the peace, he proceeds to inquire into the matters charged against the accused; he causes witnesses to be summoned, and hears in presence of the accused all that is adduced. The accused has the fullest right of having counsel and of cross-examination, as well as of producing any witness, and having such evidence heard in his behalf as he can procure. All the depositions are taken down in shorthand or otherwise, and if in long hand signed by the deponent after being read over to him.

"After all the evidence for the prosecution is in, the magistrate may allow argument, or he may proprio motu hold that no case has been made out-in which case the accused is discharged—or he may read over aloud all the evidence again (unless the accused expressly dispenses with such reading), and address the accused, warning him that he is not obliged to say anything, but that anything he does say will be taken down and may be given in evidence against him at his trial, and asks "Having hear the evidence, do you wish to say anything in answer to the charge?" Then if desired by the accused, the defence evidence is called.

"If at the close of the evidence the magistrate is of opinion no case is made out, he discharges the prisoner, but the accused may demand that he (the accuser) be bound over to prefer an indictment at the court at which the accused would have been tried if the magistrate had committed him.

"If a case is made out, the accused is committed for trial with or without bail, as seems just, the witnesses being bound over to

give evidence.

"Police magistrates are appointed for most cities and towns, who are generally barristers; these have a rather higher jurisdiction than the ordinary justice of the peace; in some cases with the consent of the accused.

"The courts which proceed by indictment are the Supreme

Court of the Province and the General Sessions.

"The Supreme Court can try any indictable offence; the Sessions cannot try treason and treasonable offences, taking, etc., oaths to commit crime, piracy, corruption of officers, etc., murder, attempts and threats to murder, rape, libel, combinations in restraint of trade, bribery, personation, etc., under the Dominion Elections Act.

"Within twenty-four hours of committal to gaol of any person charged with any offence which the Sessions could try, the Sheriff must notify the County Court judge (who acts as judge in the Sessions) and with as little delay as possible the accused is brought before the judge. The judge reads the depositions, and tells the prisoner what he is charged with and that he has the option of being tried forthwith before him without a jury or being tried by a jury. If the former course is chosen, a simple charge is drawn up, a day fixed for the trial and the case then

disposed of.

"If a jury be chosen, at the Sessions or the Supreme Court (Criminal Assizes), a bill of indictment is laid before a grand jury (in Ontario of thirteen persons) by a barrister appointed by the Provincial Government for that purpose. The indictment may be in popular language without technical averment, it may describe the offence in the language of the statute or in any words sufficient to give the accused notice of the offence with which he is charged. Forms are given in the statute which may be followed. Here is a sample:

"'The Jurors of Our Lord the King present that John Smith murdered Henry Jones at Toronto on February 13th, A. D.

1912."

"No bill can be laid before the grand jury by the crown counsel (without the leave of the court) for any offences except such as are disclosed in the depositions before the magistrate; but sometimes the court will allow or even direct other indictments to be laid.

"The grand jury has no power to cause any indictment to be

drawn up.

"We do not allow an examination of the proceedings before the grand jury—there is no practice of quashing indictments for irregularities before the grand jury, insufficiency of evidence or the like. The grand jury is master in its own house; it may call for the assistance of the crown counsel or proceed with investigations without him, and no shorthand or other notes are taken of the proceedings, the grand jurymen are sworn to keep 'the king's secrets, your fellows' and your own.'

"Upon a true bill being found, the accused is arraigned; if

he pleads 'not guilty' the trial proceeds.

"He has twenty peremptory challenges in capital cases; twelve if for an offence punishable with more than five years' imprisonment, and four in all other cases—the crown has four, but may cause any number to stand aside until all the jurors have been called.

"I have never, in thirty years' experience, seen it take more than half an hour to get a jury even in a murder case—and I

have never but once heard a juryman asked a question.

"In case of conviction, the prisoner may ask a case upon any question of law to be reserved for the Appellate Division or the judge may do that *proprio motu*. The Appellate Division may also direct a new trial upon the ground that the verdict is against evidence; but I have never known that to be done.

"No conviction can be set aside or new trial ordered even though some evidence was improperly admitted or rejected, or something was done at the trial not according to law or some misdirection given, unless, in the opinion of the Appellate Division some substantial wrong or miscarriage was thereby occasioned at the trial. If the Appellate Division is unanimous against the prisoner, there is no further appeal; but if the court is divided, a further appeal may be taken to the Supreme Court of Canada. I have never known this to be done but once.

"A wife or husband is a competent witness in all cases for an accused. He or she is compellable as a witness for the prosecution in offences against morality, seduction, neglect of those in one's charge and many others. The accused is also competent, but not compellable in all cases. If an accused does not testify in his own behalf, no comment can be made upon the fact by prosecuting counsel or the judge.

"No more than five experts are allowed on each side.

"I have never known a murder case (except one) take four days—most do not take two, even with medical experts."

And if a murderer is not hanged within a year of his deed he may properly complain of being deprived of his rights under *Magna Charta*—"We shall not delay justice" was the king's promise.

I venture to hope that some of my brother judges in this great Republic may derive some benefit from what I have said.

Let me repeat, I am not a missionary nor do I urge any change in any system of practice but my own—I only state facts as they are within my knowledge in the hope that they may not be wholly without benefit to others.

I cannot close without expressing my gratitude for the illuminating judgments of many of the judges of the United States and State courts which have cast a ray of light over many a dark path and assisted us Canadian judges to do justice according to law.

And I feel deeply the cordiality with which you have received me and my message—I am wholly confident that you and we must remain in friendship and harmony as our countries have for more than a century—and that our sympathy with and affection for each other must increase as we know each other better.

WHAT OF CANADA?

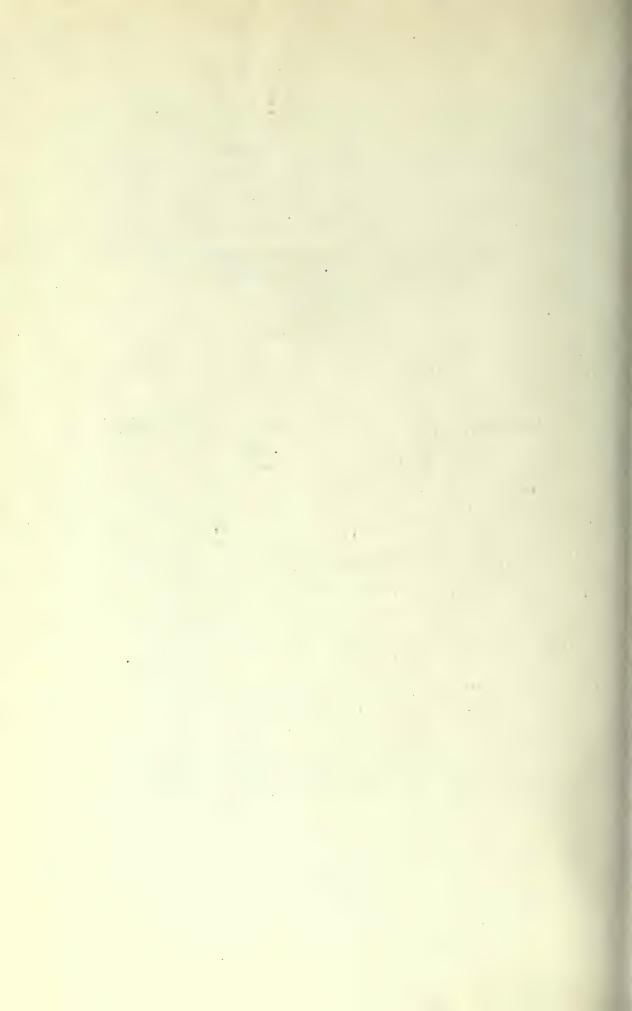


An Address before the Bar Association of North Dakota, August, 1920.

---BY---

The Honourable William Renwick Riddell, LL.D. F.R.S. Can. etc.

Justice of the Supreme Court of Ontario.



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NOTE: This address had been planned and in manuscript before the speech in the Canadian House of Commons of the Honourable N. W. Rowell, K. C., President of the Council, of March 11, 1920, in which he expressed in the clearest terms and with the perfect approval of the House, the position of Canada, nationally and internationally. I have made a few changes in terminology to make my language more in accord with that employed by the official spokesman of the Government of Canada; the thought is unchanged.

Since this Address was in the hands of the Secretary of the Association, speakers on both sides of politics in the United States have spoken of Canada's right to a place in the League of Nations; it should not be necessary for me to emphasize the fact that I had, as I have, no desire or intention to interfere in American politics.

Two years ago, the world was at war, democracy and our civilization were in the balance. American and Canadian soldiers stood, marched, fought, died side by side in the one cause of what we believed was just and right and holy.

But a few days and the foe who had with braggart front and contemptuous disregard of all but his own will, thrown himself upon crucified Belgium and tortured France, ac-

knowledged defeat and sought peace.

The victorious nations sat in council and not only determined the conditions upon which peace should be granted to vanquished Germany and Austria, but also carefully evolved a scheme which it was fondly hoped would render impossible for the future such acts of aggression. The scheme largely, indeed almost wholly, an American product, promoted and formulated by an American, was painfully reduced to form, and after much anxious thought and earnest discussion shone forth as the League of Nations.

The great nations of the earth by their representatives signed this League, the Stars and Stripes floated over the statesmen whom the mighty Republic had chosen as its President for the second time; Britain proudly held her blood-red banner with its long story of honour,

The flag that braved a thousand years,

The battle and the breeze;

France exulted in her tricolor but little more than a century old but a century of glory; Italy her flag still younger but not less loved.

The smaller nations were not shut out from this great covenant; Canada and Australia and New Zealand and South Africa whose representatives had sat in council to determine the Treaty became signatories and parties to the League.¹

Nation after nation approved the action of their representatives, Canada approved with others—but two nations there were which stood out, the United States and Venezuela.

I have not the slightest inclination, or the slightest intention to find fault with this conduct on the part of the United States. I am a Canadian, not an American, and it would be an impudent assumption for me to criticize anything this people chooses to do; you know your own business, are perfectly capable of attending to it and require no advice from an outsider, advice which would be as futile as it would be presumptuous.

Nor do I think that the League of Nations is of such overwhelming, so crucial importance that we should grieve as those without hope over its defeat in the Senate.

It is not the defeat of the Treaty that pains the Canadian, it is something wholly different: it is that the Senate of the United States has said in effect that if Canada has a vote and a voice in the Council of the League, the United States repudiates the action of the Council in advance; that so far as the United States is concerned Canada shall not have the status of a nation.

Cuba in whose affairs the United States may and does

⁽¹⁾ The extraordinary idea seems to prevail in some quarters that it was Britain that demanded that Canada and her sisters should have a place in the League. And it has been asserted that Lloyd George "pulled the wool over the eyes of Woodrow Wilson" in this matter. I have myself been congratulated by an American upon the astuteness of the English Statesman as shown by this victory and I fear that my friend resented my indignation at the suggestion as I the suggestion itself. Nothing can be further from the truth. The Statesmen from London were more than willing that they should speak for the whole British Empire. The Dominions demanded that they should speak for themselves and insisted on the demand.

interfere, Panama which cannot call its soul its own, the black republic of Hayti in the paternal charge of an American Commodore—all these and many from the east and west may sit down with the United States in Council, but the children of the Kingdom are to be cast out into outer darkness.

The "Reservation" filled thinking Canadians with wonder and those who loved the American people, and they are a very great majority, with a feeling little short of incredulity. We had believed that Americans looked upon Canadians with affection, we had thought that the valour of our sons had won us your respect, that our terrible losses had proved our devotion to a common cause and shown that we were deserving of respect; we knew that all the rest of the world acknowledged, gladly acknowledged, our new status and caring nothing for Venezuela—no, I do Venezuela injustice, it was Ecuador—we were perplexed at the slur cast on us by our nearest and most familiar friend—whom we had considered bone of our bone, flesh of our flesh. We asked ourselves what it meant, and conscious that we were guiltless of wrong in word and deed toward the United States, we sought further. It cannot be that the action of the Senate is due to political—or rather partisan feeling. for one refuse to believe that Senators representing a great people and performing the most important duty which has ever been cast upon any body of men can possibly degrade their high office by shaping their conduct by party expediency alone. There may of course be some tincture of that, there may be a desire to chasten a political opponent, and in that regard the old Southern doctrine may be allowed: "Every man has the right to lick his own nigger.", there is a great deal of human nature in man and the President may not have always been conciliatory or considerate of the other Party, but it would be an insult to the intelligence and honesty of the majority of the Senate to say that "It is all politics."

Nor could it be from ill will toward Canada or Canadians.

From the very formation of the United States of Amerca, its people have shown their friendship in a thousand ways—nay, before the Declaration of Independence itself, this was manifested.

Canada, indeed, had been acquired by Britain mainly for the advantage of the Thirteen Colonies to the South. Britain when it came to the negotiation of the Treaty of 1763 with France preferred the Island of Guadeloupe to the "few arpents of snow" which Canada was believed to be,

and it was the insistence of the Colonists which led her to abandon her claim to the Island and to accept Canada instead. And when the "Thirteen Colonies" began to complain of tyrannical rule from across the Atlantic, every effort was made for the "Fourteenth Colony", every means taken to show their friendship. In October 1774, the Massachusetts Provincial Congress voted to take into consideration the appointing of an agent to Canada to settle a friendly correspondence and agreement with Canadians; and soon Adams was congratulating Canadians on having "in common with other Americans the true sentiments of Liberty." The Continental Congress, too, in October, 1774, had in a letter to the people of Quebec condoled with them on their deplorable state which forbade them discovering "a single circumstance promising from any quarter the faintest hope of liberty" and urged them to send representatives to the Continental Congress at Philadelphia in May, 1775. This address was chiefly for the French Canadian, but the English Canadian was not forgotten. In the address to the People of England, September, 1774, the Congress deplored the unhappy condition into which the Quebec Act of that year had reduced many English settlers and could not suppress its "astonishment that a British Parliament should ever consent to establish in Canada a religion that has deluged your Island in blood and dispersed impiety, bigotry persecution, murder and rebellion through every part of the world."

When both appeals proved fruitless and the Colonies at length determined on a warlike expedition and Arnold made that Annabasis up the Kenebec and Catabasis down the St. Charles which but requires a worthy historian to be as celebrated as those of Xenophon and his Ten Thousand over twenty centuries before, he spread broadcast Washington's printed manifesto calling upon Canadians to unite with the Colonists "in an indissoluble union" to "run together to the same goal."

Benjamin Franklin and John Carroll who went to Montreal as delegates in 1775, were equally benevolent to the Canadians and if equally unsuccessful, that was not their fault.

When Canada remained loyal and when a generation afterwards in 1812 the United States found itself again at war with Britain (I do not discuss the merits of that controversy) and determined to invade Canada, great pains were taken by General Hull to make it clear that no harm was intended to Canadians, but that their good was sought;

he promised that they would be "emancipated from tyranny and oppression and restored to the dignified station of freedom."

And Ceneral Sutherland a quarter of a century later leading an army of "Sympathizers" into my Province was acting to free the land from tyranny and to destroy the "Hordes of worthless parasites of the British crown * * * * quartered upon you to devour your substance, to outrage your rights, to let loose upon your defenceless wives and daughters a brutal soldiery."

That Canadians were unable to see that they were not in a dignified station of freedom, that they could not remember any parasites of the Crown and that they fought and hundreds died in repelling these invasions is no diminu-

tion of the benevolent instincts of the invaders.

Even the American Fenians of 1866 cherished kindly feelings toward us, offering us freedom from the tyranny of England.²

But if such were the sentiments of the Americans in war who can enumerate the countless instances of exhibition of friendship in peace?

That very great American who has just passed from us, the American who seemed to typify the American spirit more than any other man of our generation, one whom I loved as a brother and differed from in almost every conceivable question, when inspecting the Canal Zone gave utterance to a sentiment in which I think you all agree. We are told that making an inspection of the wards of Ancon Hospital, C. Z., the commanding officer accompanying him explained as they passed from building to building the class-ifications of the occupants stating the terms "American Medical Ward," "American Surgical Ward," etc. On anproaching another the introduction was "Foreign Surgical Ward". On their entrance, an ex-soldier of the British army stood at attention and saluted. This arrested his attention and he, returning the salute, spoke to the patient asking several pertinent questions, at the close of which he turned to the C. O., saying: "Did you not tell me this is the foreign ward? What is this patient doing here? No Britisher is a foreigner to an American. Have this man transferred to an American Ward."

These words of Theodore Roosevelt----there is no

⁽²⁾ I see that the Sinn Feiners are declaring that they will gladly fight for us. We really do not need their assistance; we are quite able to look after ourselves and to do any fighting that is necessary.

one who has not already identified that American and it could not be but that you must needs recognize the description—contains a pregnant truth—and I thank God for that truth.

If an Englishman cannot be a foreigner to an American, what of the Canadian?

Canadians we are to the finger tips and proud of it, British we are to the last drop of our blood and with no desire to change our position; yet born on this great Continent we have from infancy breathed her free air, we have joint possession with you of her mighty territory and are joint custodians of her mighty destiny. Americans we are not; but in the highest and best sense of the Word we are American.

It would be a surprise to see and know that a Canadian was not welcomed with cordiality and kindness—for everywhere throughout this great Republic, a Canadian is

greeted as a brother.

With negligible exceptions your statesmen, your leaders of public thought in Universities and elsewhere, your writers, your poets, are in harmony in that thought. The most American of the poets—he who calls himself "a Manhattenese, the most loving and arrogant of men"—writes his Chants Democratic, "Remembering Kanada" as "Remembering inland America, the high plateaus stretching long" and "Remembering what edges the vast round of the Mexican sea." So, too, asserting "the Kanadian of the North * * the Southerner I love", trilling his songs to Democracy he prophesies—a prophet then in very truth—"If need be, a thousand shall sternly immolate themselves for one. The Kanuck shall be willing to lay down his life for the Kansian and the Kansian for the Kanuck on dire need."

Divided as we are in political allegiance, strangers to each other by international law, we are united by a higher law, the very Statute of Heaven, the eternal rule that like

will to like.

Nor is it that the United States is opposed to the formation of another state in the world, a new sister in the sisterhood of nations—the very Congress which says that it will not have Canada sit with it in a Council of Nations hails with acclaim the hope that Ireland may take her place there under a government of her own choosing. Were I finding fault—as I certainly am not—with this discrimination I would ask "Is Canada less worthy of respect and confidence than Ireland? Have Canadians a less honourable record than Irishmen in the world war? In what way are we worse as neighbors, less desirable as friends?" I say and

repeat that I am not finding fault; every nation as every individual has the right to choose its own company, and Canada stands on her own feet and can if need be stand alone. I am seeking the reason underlying what on its face is a reflection on my country.

None of the suggested reasons is the true one. I am wholly convinced that the true reason is the belief, conscious or subconscious, that Canada is an outlying dependency of a European power bound to vote and act as she is directed and not an absolutely free agent—in a word that Canada is a Colony of England. That this is the true reason will become apparent if you but think how she would be received by all the people of the United States were she to sever all association with Britain and raise a new flag. Is there an American who would not welcome her to the society of Nations? Americans are not to be blamed for not appreciating the status of Canada for there are many Canadians who do not understand the change in her position, and indeed there are many who deprecate it.

To understand Canada, her origin must ever be kept in mind. I will speak only of Ontario, Upper Canada, but my statements may be applied, mutatis mutandis, to the Maritime Provinces, and the Western Provinces are in great

We have had our troubles with Japanese in Western Canada, which we settle in our own way against the strong wishes of the statesmen in London. If the matter comes up again, as it seems inevitable that it must within a year, Canada will have her own voice, and it is inevitable that she will on this question stand with Australia and against England.

I know my people, and I believe I know the American people as well as anyone not an American can know them, and I say with the utmost premeditation and deliberation that in most cases Canada is much more likely to vote with the United States than with England. We are a sister nation, not a subordinate.

⁽³⁾ It will perhaps be news to many, but it is none the less true that Australia defeated one of the most ardently pressed claims of Japan, i. e., a recognition of racial equality. This Japan urged almost as strongly as her possession of Shantung, perhaps more so. Britain assented to the claim—Japan was her Ally America did not stand out, but Australia would not have it and the other Dominions stood with her. Hughes, the Australian representative, told Lloyd George in plain terms, "If you consent to Japanese equality, I leave the conference and the other Dominions will follow me," and Lloyd George, on April 11, allowed Japan to be defeated. It is said that Baron Makino, "in delicate, carefully chosen English sentences, told the conference of Paris that it had outraged the honor of Japan. The speech was one of the shortest and most memorable of the great congress. It made a profound impression." But that made no difference; Australia and her sisters had spoken and England was helpless.

measure the offspring of these older Provinces. Quebec,

Lower Canada, stands in a different position.

When the independence of the United States was admitted in 1783, many American Colonists left the new Republic and made their way to the North. These men had the misfortune that they had supported a Lost Cause: like the Cavaliers of the times of Charles I, they clung to their allegiance, but unlike them their cause did not again triumph; they have therefore had hard measure at the hands of American historians, until but the other day no virtue could be found in the Tories of the Revolution, they were considered traitors to liberty, haters of freedom, supporters of tyranny, what not? We know them as United Empire Loyalists who kept their faith, who gave up all, even sometimes life itself that the Empire might remain United even as thousands, decades thereafter, gave up everything that the United States might remain United. They were not different from other Americans in love of freedom any more than their congeners the Cavaliers differed from other Englishmen, but they believed——at least they hoped that their undoubted rights would be best attained by constitutional means and that the arbitrament of the cannon and the bayonet was not necessary. These men

"Got them out into the Wilderness, The stern old Wilderness: But then—'twas British Wilderness!" . they who loved The cause that had been lost—and kept their faith To England's Crown and scorned an alien name. Passed into exile; leaving all behind Except their honour Not drooping like poor fugitives they came In exodus to our Canadian wilds. But full of heart and hope, with head erect And fearless eye, victorious in defeat; With thousand toils they forced their devious way Through the great wilderness of silent woods That gloomed o'er lake and stream, till higher rose The Northern Star above the broad domain Of half a continent, still theirs to hold, Defend and keep forever as their own."

They were Americans and brought with them an ardent love of liberty but they also brought with them the determination not to give up their share in the old flag in the traditions of the people, they would not cut themselves adrift from the rest of their race.

The two principles brought into my Province by the

United Empire Loyalists have ever characterized Canadians and do today. We will not give up our share of the flag, but we must and will govern ourselves.

For more than quarter of a century the Mother country paid the whole expense of protecting and gov-erning the young Province⁴ and it was not until 1816 that Upper Canada began to take the burden off her Thus far the settlers were too much ocshoulders. cupied in carving a way through the forests, in making a home for their families; and who in these days can adequately appreciate the toil and danger of the first settlers?——to take much interest in details of administration. Much of the administration of affairs got into the hands of a clique or class—at first immigrants but growing more and more of Canadian birth. The Lieutenant Governors sent out from London really governed as the Governor of American states do to this day, but they were largely guided in their judgment by the native official class. An agitation calling for the administration to be put into the hands of those who should be responsible to the people sprang up and at length it (in 1837) culminated in open rebellion. During all this time, the Administration in England had not interfered in the side of power; the Governors whenever they sought advice were always recommended to grant political rights as asked by the people—the Rebellion while in form against the young Queen was in fact against the Canadian official class. Open rebellion was too much for the majority in the Province; every British soldier had been sent to Lower Canada but the Upper Canadians themselves put down the Rebellion and drove back the Sympathizers with Rebellion who ventured to invade their land from the United States.

But while they thus showed their adherence to the one principle, "We will not give up our share in the old flag", they did not forget the other: "We will govern ourselves".

⁽⁴⁾ It is hard for Americans who have been matured on the principles of the Revolution, who have been taught the wrongs under which their ancestors suffered at the hands of the King of England and his Ministers, to understand or to believe that Canada was acquired for the sake of the Colonies, and that after the Colonies had broken away from England, she continued to expend blood and money in protecting Canada. Hard pressed as she was, she did not spare men or means to make Canada happy and prosperous. Others may gird at England, Canada cannot.

⁽⁵⁾ As open rebellion was too much for hundreds of thousands of Americans who sympathized with the claims of the Southern States.

The short lived Rebellion brought matters to a head; Britain saw that the native rights of Canadians were not accorded them under the existing system and united the two Canadas into one under an Act which contemplated government by those responsible to the representatives of the peo-

ple duly elected to Parliament.

Many Americans find great difficulty in understanding our form of Government. That is largely due to the fact that when the young Republic began its life as a nation, it cut the painter, it broke away from the old traditions and framed a new Constitution. It must needs be that the Consitution should be in writing; the many conflicting theories were threshed out and the finished result exhibited in a document such as the World had never seen and the English speaking world had scarcely contemplated. The Constitution of the United States is the very Ark of the Covenant for the American people; and it means what it says. The rest of the English speaking world have not made a radical and violent change. Retaining the old manners and the old forms, the whole spirit of its government has undergone a continuous course of evolution.

The King has the titles and outward show of a Henry VIII, the Army is his and the Navy; he appoints Ministers of the Crown and Judges, Ambassadors and Envoys; he is King by the Grace of God and the British world are his subjects. So in appearance. But in fact he is King by grace of an Act of Parliament, he cannot appoint a drummer boy or a midshipman, the Ministers of the Crown are chosen for him, he never saw and does not know one out of ten of the Judges, Ambassadors and Envoys appointed in his name.

The British Constitution is an elaborate system of camouflage like to nothing else under the canopy of Heaven, past or present. And if you find anything clearly expressed in that Constitution, you may be pretty certain that it is

not so.

One and only one bit of camouflage the American Con-

stitution displays.

In theory, the citizens of each State after taking a survey of the citizens of their State select a number whom they consider best fitted to select a President. The electors so chosen from the various States form the Electoral College. These choice and chosen citizens take a survey of the millions of Americans eligible for the Presidency and choose him whom they believe best suited for the office. So the theory—everyone knows that the fact is far otherwise. No one cares and very few know anything about the capacity or honesty of the Electors; and no one doubts who is to be

President when it is known who are the Electors. If every Elector at the latest Presidential election had believed that Mr. Roosevelt or Mr. Taft was the ideal man for the Presidency, not a vote would have been cast for either unless

there developed some insanity in the College.6

This sort of thing, the unique exception in the American Constitution, is the rule in the British Constitution. The King may choose only the one selected for him. Every Minister is in form the servant of and responsible to the King, he is in fact responsible to the House of Commons elected by the people. The King reigns but he does not rule and does not try to rule; he leaves the ruling to the people to whom it properly belongs. The Ministers selected in fact if not in form by the House of Commons transact all the public business, select Judges, Admirals, Generals, Ambassadors.

This we call democratic Kingship, and it is the only kind we—or the King—would have. Louis XIV of France said, "L'Etat c'est moi," "The State! I am the State"; the arrogant Hohenzollern said, "There is but one will and that is mine, him who opposes me I will crush." Our King's throne is "broad based upon his people's will." He is the head of the State, all others are his people; there is no heaven-born caste whose blood differs from that of others. The Prince of Wales, whom Americans had but the other day an opportunity of seeing and judging, gave an illustration of democracy:

In Auckland, New Zealand, where he felt it right to refuse that striking railroad men should make exception in his case and run the royal train, when they would not (or perhaps could not) carry out

the rest of the schedule.

"Will they run the trains for the people?

"No.

"Then they cannot run trains for me. I am one of the people."

⁽⁶⁾ I may, perhaps, be permitted to repeat here what I said at the meeting January 23, 1920, of the Ohio State Bar Association, at Dayton:

[&]quot;Last evening I was entertained at dinner by a number of eminent lawyers of this State. The conversation turned on the coming Presidential election; the Democrats eliminated as a successful candidate every Republican, whose name was suggested and the Republicans showed that no Democrat could hope to be elected. I asked, 'Why not take the Constitutional method, elect a number of first class men and let them select the President? Surely that is the theory of the Constitution.' They almost simultaneously and quite unanimously cried, 'That is the Theory,' and let it go at that."

"One of the people!" No king ever took to himself a prouder title. No Prince of Wales was ever so worthy as this prince of that princedom whose motto is, "I serve."

The King is King of Canada, and it was this form of Responsible Government which was intended to be introduced into Canada by the Union Act of 1841.

A Governor was sent out from England to represent the King and for a time the Governor sometimes took his title and his position seriously and interfered with, even attempting to direct, the government of Canada.

But this became less and less common and by the time of the end of the American Civil War, Canada had in substance Responsible Government.

This had a great impulse given to it by the Union of the British North American colonies in 1867. The Canadas Nova Scotia and New Brunswick, drew up a plan of Union and this plan was approved by the British Parliament and became law. In form the British North American Act 1817, which may be called our Constitution, is an Act of the Imperial Parliament; in fact it is a compact made by the several provinces put in the form of an Imperial Statute for purpose of regularity and formal validity.

As yet Canada was concerned only with her own affairs. True her statesmen had generally been consulted in matters affecting her which came up for discussion and settlement with other powers, but it was in 1871 for the first time that one of her people became a Plenipotentiary for the British world. Sir John Alexander Macdonald, Prime Minister of Canada, took part as a British Commissioner in the negotiation of the Washington Treaty; moreover, so far as the Treaty affected Canada, it was not to come into force until laws to carry it into operation had been passed by the Parliament of Canada.

Even the appointment of Sir John Macdonald, however, was due to the fact that Canada was vitally interested in the matters to be discussed and settled; and for a score of years after Confederation in 1867, it cannot fairly be said that Canada counted for much outside her own concerns.

But in 1887, a great stride was made in her progress to nationhood. In that year was called the first Colonial Conference attended by representatives of the various self-governing British Colonies—for Canada was yet a "Colony." It was the day of small things, but one statesman at least had a glimpse of the real significance of the gathering. Lord Salisbury said:

We all feel the gravity and importance of this occasion. The decisions of this Conference may not be, for the moment, of vital importance; the business may seem prosaic, and may not issue in any great results at the moment. But we are all sensible that this meeting is the beginning of a state of things which is to have great results in the future. It will be the parent of a long progeniture, and distant councils of the Empire may, in some far-off time, look back to the meeting in this room as the root from which all their greatness and all their beneficence sprang."

These Conferences continued to be called from time to time until at length a most important matter had to be

settled.

Canada had decided to give a preference to British manufactures by reducing her duty on such goods. This had for a long time been admitted as being within her undoubted powers. But Germany raised the objection that by a treaty with Great Britain she was entitled to the advantages of the most favored nation in tariffs in Britain and her Colonies. Canada was technically a Colony and Germany asserted her right to the same preferential treatment as Britain. Her claim was allowed. We have no "scrap of paper" principle—but Canada determined that the German should not have the same treatment as the brother Briton, and brought the question up on the Colonial Conference of 1897. There she insisted that the obnoxious treaties should be denounced, and denounced they were. This simply meant that Canada refused to allow her external relations in the matter of custom tariffs to be dictated by Britain, and her claim was allowed.

Germany thereupon placed a differential duty on Canadian goods. Canada accepted the challenge and placed a surtax on German goods; and the coon came down. Canada could get along without Germany's manufactures, toys and otherwise, better than Germany could without Canada's

productions.

The self-governing nations of the British world meeting to discuss and consider what affected them all or some of them, it was at length felt that the name "Colonial" was a misnomer and in 1907 the name of the Conference, now becoming a regularly meeting body, was changed to the Imperial Conference by the following resolution:

"That it will be to the advantage of the Empire if a Conference, to be called the Imperial Confer-

ence, is held every four years, at which questions of common interest may be discussed and considered as between His Majesty's Government and His Governments of the Self-Governing Dominions

beyond the seas.

The Prime Minister of the United Kingdom will be ex-officio President, and the Prime Minister of the Self-Governing Dominions will be ex-officio members of the Conference. The Secretary of State for the Colonies will be ex-officio member of the Conference and will take the chair in the absence of the President. He will arrange for such Imperial Conference after communication with the Prime Ministers of the respective Dominions."

It will be seen that there was a steady advance toward the abolition of even the semblance of control by or inferiority to the British nation.

Not long thereafter came the war, the war before which all other wars from the beginning of time pale their

uneffectual fires.

When Germany made that assault upon innocent Belgium so long preparing and at least thought certain of success, Canada did not delay a minute—the Atlantic Cable carried the message, "The last man and the last dollar."

From the earliest days of Canada there has never been a stricken field where British troops fought but a Canadian was present. Waterloo with the young and gallant Dunn who gave up his life for freedom, less fortunate than his namesake who took part in the charge of the Light Brigade at Balaklava; Kars, where the Canadian Williams held the foe at bay for months; these and many other fields of battle saw the Canadian fighting for his flag.

In 1884, Canadian boatmen drove up the Nile in the forlorn hope to save Gordon. In 1900-1901 Canadian troops fought in South Africa. But all these were volunteers and while they were Canadians they were equipped and paid by

Britain.

Now there was a change. Canada raised her own forces, equipped them, paid them, cared for them and pays the pensions of survivor and widow and child of the honored dead. Sixty thousand Canadian dead and three times as many wounded prove how Canada acquitted herself. England could not call upon us for a soldier, a ship, an ounce of supplies, a cent of money; nor did we fight for England. We poured out our money like water, our men died in tens of thousands for a struggle which we call our own because

we believed and believe it to be for humanity at large and our cwn chosen form of civilization. And England knows. Since the war began no responsible British Statesman has ever called Canada a Colony. We with other British peoples are recognized and called, as we are, Self-Governing British Nations.

In 1917, a remarkable circumstance occurred which is thus described by the President of the Council at Ottawa:7

"In 1917, the Prime Minister of Great Britain called together the Ministers of the self-governing Dominion for consultation on vital matters of policy—relating to the prosecution of the war. They met as equals as Prime Ministers of the nations of the Empire to discuss matters of common concern to the whole Empire. Great Britain recognized that with the growth in power and influence of the Dominions, the time had come when the Government of Gerat Britain should frankly recognize that the Dominions had ceased to be in any sense States dependent upon the Mother Country, and had become sister nations, standing on an equality with the Mother Country."

What the Cabinet at Westminster thinks of this may be read in the Report of the War Cabinet of the Government of Great Britain for the year 1918. It reads thus:

"The common effort and sacrifice in the war have inevitably led to the recognition of an equality of status between the responsible Governments of the Empire. This equality has long been acknowledged in principle and found its adequate expression in 1917 in the creation or rather natural coming into being of an Imperial War Cabinet as an instrument for evolving a common Imperial policy in the conduct of the war. The nature of the constitutional development involved in the establishment as a permanent institution of the Imperial Cabinet system was clearly explained by Sir Robert Borden in a speech to the Empire Parliamentary Association on the 21st of June, 1918." What our Prime Minister, Sir Robert Borden, said at

the meeting of the Imperial Council is as follows:

"A very great step in the constitutional development of the Empire was taken last year by the Prime Minister when he summoned the Prime

⁽⁷⁾ Speech of the Honourable Newton W. Rowell, K. C., President of the Council, House of Commons, March 11, 1920.

Ministers of the overseas Dominions to the Imperial War Cabinet. We meet there on terms of perfect equality. We meet there as Prime Ministers of self-governing nations.8 We meet there under the leadership and the presidence of the Prime Minister of the United Kingdom. After all. my Lord Chancellor and Gentlemen, the British Empire as it is at present constituted is a very modern organization. It is perfectly true that it is built up on the development of centuries, but as it is constituted today both in territory and in organization it is a relatively modern affair. Why, it is only 75 years since responsible government was granted to Canada. It is only little more than fifty years since the first experiment in Federal Government—in a Federal Constitution—was undertaken in this Empire. And from that we went on, in 1871, to representation in negotiating our Commercial Treaties, in 1878 to complete fiscal autonomy and after that to complete fiscal control and the negotiation of our own treaties. But we have always lacked the full status of nationhood because you exercised here a so-called trusteeship, under which you undertook to deal with foreign relations on our behalf, and sometimes without consulting us very much. Well, that day has gone by. come here as we came last year, to deal with all these matters upon terms of perfect equality with the Prime Minister of the United Kingdom and his Colleagues. It has been said that the term Imperial War Cabinet is a misnomer. The word "Cabinet" is unknown to the law. The meaning of "Cabinet" has developed from time to time. I see no incongruity whatever in applying the term "Cabinet" to the Association of Prime Ministers and other ministers who meet around a common council board to debate and to determine the various needs of the Empire. If I should attempt to describe it, I should say it is a Cabinet of Governments. Every Prime Minister who sits around that board is responsible to his own Parlia-

⁽⁸⁾ Within this week I have heard these words read with perfect acceptance and approval by a prominent member of His Majesty's Privy Council at Westminster, Viscount Cave, formerly Solicitor General and Home Secretary, addressing the Empire Club of Canada, at Toronto, September 27, 1920.

ment and to his own people; the conclusions of the War Cabinet can only be carried out by the Parliaments of the different nations of our Imperial Commonwealth. Thus, each Dominion, each nation, retains its perfect autonomy. I venture to believe and I thus expressed myself last year, that in this may be found the genesis of a development in the constitutional relation of the Empire which will form the basis of its unity in the years to come."

We cannot do better than to follow the President of the Council by quoting what General Smuts, the head of another of our British nations, said in his Parliament:

I remember when the report of our National

Convention was made I made the statement that the most important thing about that document was the list of signatures at the end of it. And it is very much the same in regard to the Peace Treaty. For the first time in history the British Dominions signed a great international instrument, not only along with the other ministers of the King, but with the other ministers of the great powers of the world—and although the tremendous importance of this great act has not been fully recognized, there is no doubt that the Treaty, signed as it has been with parties to it not only representative of the King in the British Isles, but in the Dominions, forms one of the most important landmarks in the history of the British Empire. The British Dominions did not fight for They went to war from a sense of duty, from their common interest with the rest of the world, vindicating the great principle of free human government. Not only has victory been achieved for the objects for which they fought, but what for the British Dominions is equally precious, they have achieved international recognition of their status among the nations of the world. In a large sense this world is one of small nations, and certainly none of those had had larger results accruing to them from this war than the young nations of the British Empire. They have deserved this through the magnitude of their It has been proved and has never been challenged that two of the British Dominions-Canada and Australia—made a greater war effort than any other powers below the rank of first-class

powers. Their achievements have been outstanding ones. Australia alone lost more than the United States of America. They (i. e. the British Dominions) have, of course, lost heavily; they are handicapped with enormous debt, but they have at any rate emerged with victory, honor, and a new standing in the world in that they are internationally recognized today. No wonder after what they have done that their great performance all through the war, and especially towards the end of it, the other powers and nations of the world were only too willing to welcome and recognize them within the new great family. It took some time for the position to be realized at Paris because so many of the powers were under the same impression, which, according to the debate in the House that afternoon, appeared to exist in South Africa, viz: that everything seemed to be under the tutelage of the British Parliament and Government. They could not realize the new situation arising, and that the British Empire, instead of being one central government, consisted of a league of free states; free, equal and working together for the great ideals of human government. It was difficult to make people realize this, but afterwards they fully applauded, and their approval was given as embodied in this international docu-

And pray do not imagine that this change has been against the desire and in despite of the Old Land. Britain has welcomed our advance at every step, and is as proud of our new status as she is of her own.

All that I have said may be said in two ways—and I have recessionally compared these to the difference in the way in which a daughter who had set up a home of her own might speak of the mother whose home she had left. She might say defiantly, "I would just like to see my mother interfere in my affairs. I would show her where she would land! She would get out quicker than she came in." There is at least one person who calls himself a Canadian and persuades Americans that he is a Canadian—which he is not—who speaks in such defiant and truculent manner of Britain in Canadian affairs but that is not Canadian sentiment.

The other daughter says, "My mother does not and does not want to interfere in my affairs. She knows that

I am mistress in my own house, and has no desire to command there." That is our attitude to Britain.

It will no doubt come as a shock to Americans who have been taught to look upon Britain as a tyrant, to be told that Britain has never interfered in our matters where we were willing to attend to them ourselves—that statesmen in all parties in England have again and again expressed their desire that Canada should govern herself in her own way. One Bunker Hill was enough. Nay, more than once has Canada been invited, more or less openly, to proclaim her severance from the British Isles. Canada has invariably refused. We would still refuse. Independent as we are, we will not give up our share of the old flag.

Our relations with the United States, friendly as they always have been, yet sometimes give rise to difficulties. In 1909 we made a treaty with the United States. The Treaty of 1909 was preceded by the Constitution of a Board of Commissioners. Such a board was formed at the request of the President, acting under the authority of the River and Harbor Act, approved June 13, 1902. The functions of the proposed board were defined in the Act and were substantially a full investigation of the question of the boundary waters; and the Board was to consist of six members, three appointed by the United States and three by Canada. The President, July 15, 1902, communicated through the American Ambassador at London with the British Government. that covernment transmitted the invitation to the Government at Ottawa, the Canadian Government accepted the invitation, and this acceptance was communicated to the American Government. The American part of the Board was appointed in 1903 and the Canadian in 1903 and 1905; and work was begun with all convenient speed on the Sault Ste. Marie Channel, the Chicago Canal, the Minnesota Canal, etc. The Board has done an immense amount of very valuable work already.

The Treaty of 1909 was really at the instance of that Board. It provides for an International Joint Commission, three appointed by the United States, three by Canada; and the value of the work which has been done by this new Commission is incalculable.

Every dispute involving the rights, obligations or interests of the United States or of the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred to the Commission by the consent of the two countries.

It is hard to see how a more comprehensive clause

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could be framed; and if the Treaty had provided that such dispute "shall" be referred, the work would be perfect. As it is, the Dominion must give consent through the Dominion Cabinet. That is an easy task. We have a government which is united—it must be united or it could not stand—and which in this instance does not need to go to Parliament for authority. But in the United States the action must be by and with the advice and consent of the Senate; and sometimes trouble arises in the Senate about confirming treaties.

But now we are going far beyond that: A Canadian Minister is to be placed at Washington to attend to all Canadian matters—perhaps the official statement will be sufficiently complete for the present purpose. It reads:

As a result of recent discussions, an arrangement has been concluded between the British and Canadian Governments to provide more complete representation of Canadian interests at Washington than has hitherto existed. Accordingly it has been agreed that His Majesty, on the advice of his Canadian Ministers, shall appoint a Minister Plenipotentiary who will have charge of Canadian affairs and will at all times be the ordinary channel of communication with the United States Government in matters of purely Canadian concern, acting upon instructions from, and reporting direct to the Canadian Government.

In the absence of the Ambassador, the Canadian Minister will take charge of the whole Embassy and of the representation of Imperial as well as Canadian interests. He will be accredited by His Majesty to the President with necessary powers for the purpose. This new arrangement will not denote any departure either on the part of the British Government or the Canadian Government from the principle of the diplomatic unity of the British Empire.

The need for this important setp has been fully real zed by both Governments for some time. For a good many years there has been direct communication between Ottawa and Washington, but the constantly increasing importance of Canadian interests in the United States has made it apparent that in addition Canada should be represented there in some distinctive manner, for this would doubtless tend to expedite negotiations and, natur-

ally, first-hand acquaintance with Canadian conditions would promote good understanding.

In view of the peculiarly close relations that have existed between the people of Canada and those of the United States, it is confidently expected as well that this new step will have the desirable result of maintaining and strengthening the friendly relations and co-operation between the British Empire and the United States.

I have read many articles in the American press concerning this new movement and I have not yet seen one adverse comment—even those papers which approved the Senate's condition of accepting the Treaty that Canada should not be admitted on a par with Hayti, approved the

project whereby Canada asserted her nationhood.

No one who haeret in cortice, who is bound by the letter, can understand five separate and free nations under one flag. It is the advantage and glory of an unwritten constitution that a course of evolution may proceed so as to revolutionize the original constitution without wrenching the external form. The British Empire as it exists today is a triumph of just such an evolution—no race but Anglo-Saxon-Celts could have produced it, none but English speaking peoples could understand it, love it, glory in it.

What can the United States ask in order to admit Canada into the catagory of nations? A reversion to the condition of Colony? We will not pay the price, we are not going back. A severance from the rest of the British world, an adoption of a new flag, a repudiation of the old? The price is too high, we will not pay it. Having that which is desiderated for another people, a government of our own choice, we stand fast. Not that England would strive to prevent one change if we desired it—for if tomorrow Canada decided to cut the painter, not a hand or a voice would be raised in England in protest. We are, and we are acknowledged to be masters of our own destiny. It may be indeed that the question will not again arise; if it does I would ten thousand times rather that no League of Nations should be formed than that one should be formed with Canada ex-

Union of Canada with the Empire is a Canadian question to be decided by Canadians.

⁽⁹⁾ The Right Honourable Bonar Law said in the British House of Commons, April, 1920, that no one failed to recognize that the connection of the Dominions with the Empire depended on themselves, and if any chose to break away there could be no attempt to force them to stay. Dominion Home Rule meant the right to decide their own destiny.—Press Report, Toronto World, April 30, 1920.

cluded by the aid of the United States. If the present League of Nations fail, another may be formed—if the United States place upon her neighbor the slur implied in her exclusion, that will be imperilled which in my view is the real hope of the world, harmony, amity, unity among the English speaking peoples. For one thing I do venture to say, and I but use the words of Richard Rush, who in 1817, as Acting Secretary of State, arranged with Charles Bagot, the British Minister at Washington, that neither nation should maintain a naval force on the international lakes and rivers—he said, "Let the peace between the United States and England be broken, and the arch which supports the peace of the world falls in ruins."

And I use the words of another great American, of one the idol of his time, and still held in reverence by millions, who feared not the face of man, and who quailed not nor varied a hairbreadth on the outcry in England in the Arbuthnot and Armbruster affair. That gallant warrior, General Jackson, in his Annual Message, December, 1832, speaking of the good understanding which it was the interest of both parties to preserve inviolate, strikingly characterized it as:

"Cemented by a community of language, manner and social habits, and by the high obligations we owe to our British Ancestors for many of our most valuable institutions, and for the system of representative government which has enabled us to preserve and improve them."

The war has caused a great and very significant advance in the thought of many who have gone through the same experience starting with the same conception and arriving at the same result as Colonel Roosevelt, who says:

"Moreover, I am now prepared to say what five years ago I would not have said: I think the time has come when the United States and the British Empire can agree to a universal arbitration treaty. In other words, I believe that the time has come when we should say that under no circumstances shall there ever be resort to war between the United States and the British Empire and that no question can ever arise between them that cannot be settled in judicial fashion in some such manner as questions between States of our own Union would be settled."

The peace of a hundred years extending in aeternum between and among all the English speaking people, they must needs draw closer together, they must recognize their fundamental and essential identity and with or without a

formal treaty, stand and march and, if need be, fight side by side for righteousness and peace.

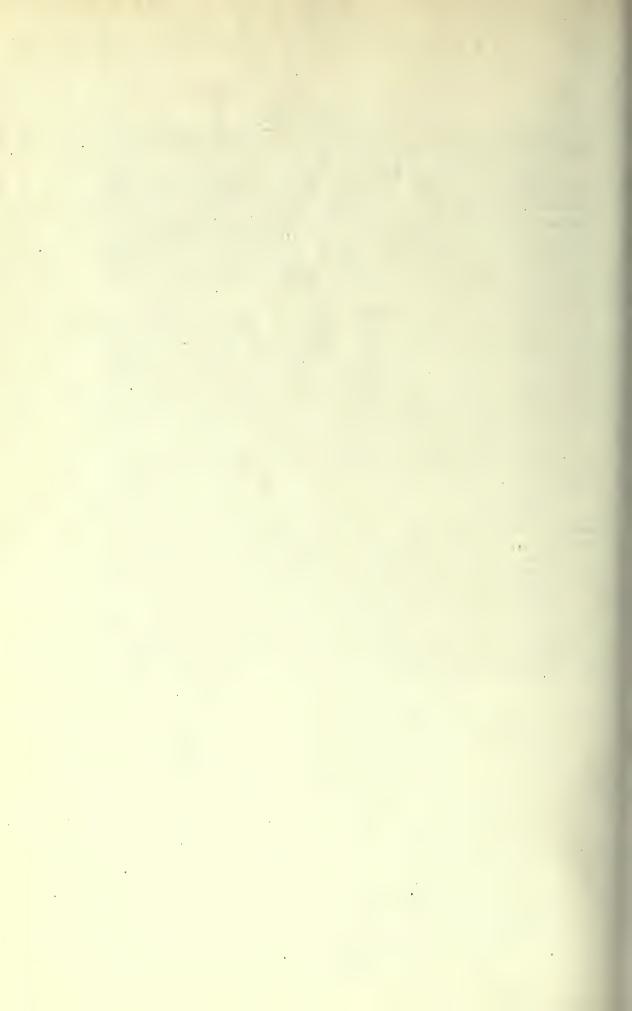
Peace is not always easy. The poetry, the glamour, the romance of war is part of our common inheritance. We are fighting animals by instinct. Our literature is full of battle, and the successful general becomes the President or the popular hero. Peace is tame and prosaic. It appeals not to the eye or the ear, and it needs a strong heart to treasure it despite the blare of trumpet and the flash of sword.

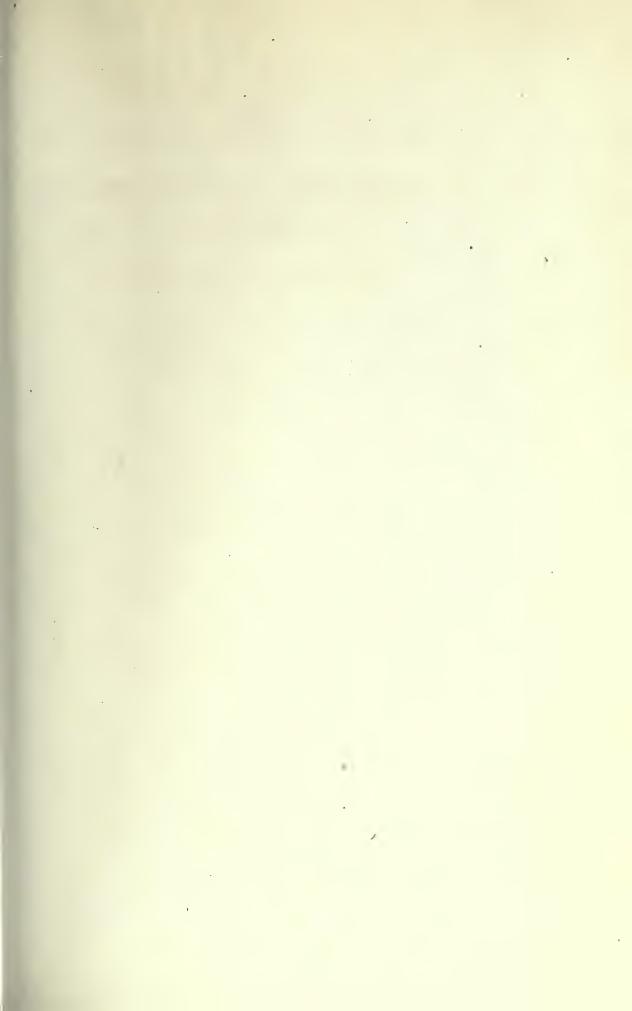
And yet it must triumph or all moral governance of the Universe is impossible. Far- far back the Hebrew prophet saw what must come to pass unless there is nothing but blind chance. "The Government shall be upon His shoulders, and his name shall be called Wonderful * *. * the Prince of Peace. Of the increase of His Government and peace there shall be no end * * * The Zeal of the Lord of Hosts will perform this."

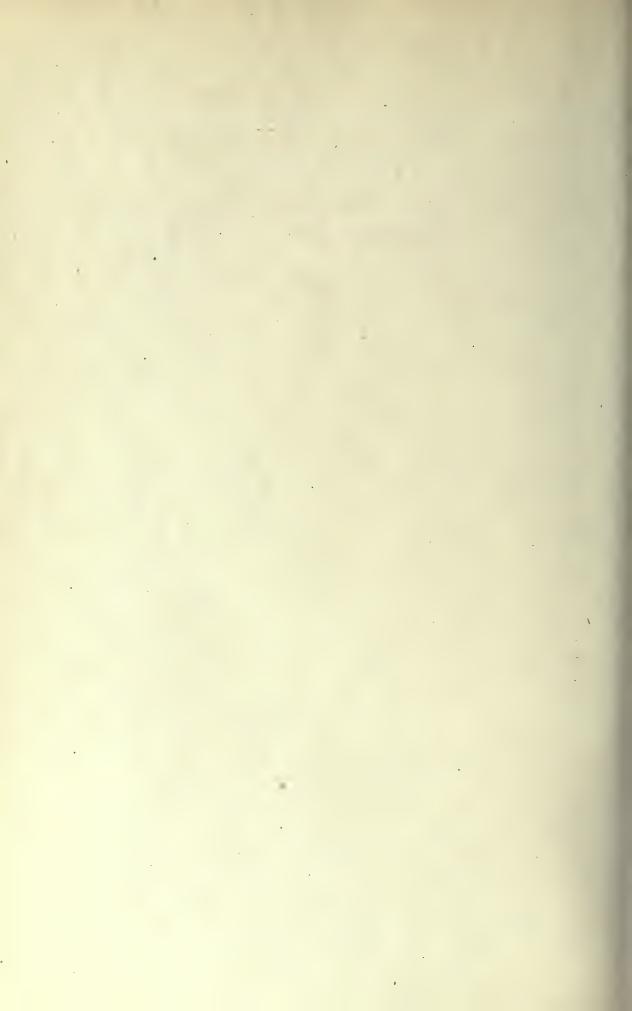
And I am wholly persuaded that this Peace of God can only come through the near union of our English speaking peoples.¹⁰

⁽¹⁰⁾ I confess to being utterly at a loss to know what is proposed by those who would ratify the Treaty with the Lenroot reservation. Canada is in the League; in a few days two of our statesmen leave for Europe to take part in the deliberations, and I may say one of the most troublesome and important questions will be the racial equality of the Japanese.

Is it proposed that Canada should be kicked out? We can survive that, too; if necessary, we can stand on our own feet, an adjunct to no nation, but do the American people desire it? Ten thousand times would I rather have no League at all than a League which would of necessity carry with it insult on the one hand, burning resentment on the other.







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of the ROCHESTER CHAMBER of COMMERCE

OCTOBER 2, 3, 4 and 5, 1917

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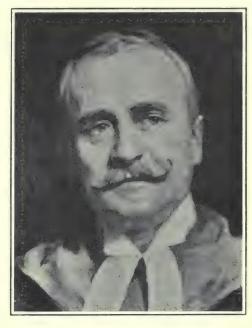
JUSTICE WILLIAM RENWICK RIDDELL

OF THE SUPREME COURT OF ONTARIO, CANADA

PRESIDENT HARPER SIBLEY, Introductory

To the North lies our great sister country, Canada, from whom, if I am right, England had no power to demand a corporal's guard or a silver shilling. England had no power over Canada whatever except that power which Germany could not see, the power of a great ideal. To that ideal Canada has made the greatest free will offering that the world has ever seen. [Applause.]

It gives me the greatest pleasure and satisfaction to introduce to you Justice William Renwick Riddell of the Supreme Court of Canada. [Applause.]



JUSTICE WILLIAM RENWICK RIDDELL

JUSTICE RIDDELL, Address

As I was sitting here this evening I wondered why it was that you had gone back to the old rule of always bringing on the best wine first, and when the people "have well drunk, then that which is worse." I learned the reason when my friend, Dr. David Jayne Hill, spoke, because he told us that you stood by the old customs. I have no reason to complain. If I had such reason on any account, it would be quite wiped out by the fact that I see that women in this city are "folks," and allowed to sit among "their betters." It is one of the most delightful customs—one which I am glad to say is spreading more and more widely, not only in this land, but also in Canada, another backward country—to ask our lady friends to favor us with their presence at a meeting, because you will find that it adds to the interest and does not at all diminish the usefulness.

Ladies and gentlemen, I am come to you, as has been said, from one of those five free governments, free governed, self governing, constituent nations of the far flung British Empire. British as we

Canadians have been, British as we are to the last drop of our blood, and British as we shall be if it costs the last drop of our blood, we can claim also that we are American, American geographically, American socially, American to a large extent commercially, American in our views of personal freedom and liberty, not governed by class or custom. We look to the south to our older, richer and stronger brother with admiration and love. Canada claims as her own his prowess and strength and glory. Nay, she has even almost forgiven the Thirteen Colonies leaving the old homestead when she was but an infant, and setting up a new establishment of their own with new rules and regulations.

When it was found that I was to come to Rochester, I was intrusted by certain of our citizens with messages which with your permission I will read. First, from the Prime Minister of Ontario, who corresponds to your Governor. We have governors of our own, but we call them governors for precisely the reason that we call the stream near my father's old farm a "trout stream," because there were no trout in it. So we call our governors "governors," because they do not govern, being themselves governed.

FROM THE PRIME MINISTER

From Sir W. H. Hearst, the Prime Minister of Ontario, to the Rochester Chamber of Commerce:

"Gentlemen:

"I am glad to have the opportunity through the kindness and courtesy of the Honorable Mr. Justice Riddell to congratulate the people of the United States on the stand you have taken in this great war. You have chosen wisely and deliberately to resist with all your great power the attempt to establish a cruel and heartless military dictation in Europe and throughout the world. We, in Canada, have long realized that whenever opportunity offered, Germany would try to seize this country. Hence it was that, at the outset, we determined, without hesitation, to stake our last man and our last dollar on the outcome of this struggle. Already, as you know, the blood of Canadians has been poured out like water on the battle-fields of Europe. We have been grateful all along to have had your encouragement and your sympathy; and we are glad to know that now we are receiving your active co-operation and support.

"We believe that the United States is in the war to the finish. Your interest is even greater than ours for you have more at stake; while your responsibility and your opportunities are proportionate to your strength in men and material resources. In this common and sacred cause we are brothers. I am confident that we will be bound together for generations by our common sacrifices and triumphs.

The laurels you will win will be our pride and our glory for we of the new world must all do our part to restore and preserve to the old world from which we have sprung the privileges and blessings that have been won by democracy through centuries of human effort and progress.

"Yours sincerely,
(Signed) "W. H. HEARST."

THE UNIVERSITY OF TORONTO

Then from Sir Robert A. Falconer, the President of the University of Toronto, which has nearly 5,000 of its sons in khaki and nearly 300 have made the supreme sacrifice:

"Dear Mr. Justice Riddell:

"I shall be very glad if on the occasion of your address you will convey to the Rochester Chamber of Commerce our greetings, and express to them the satisfaction that we feel in the knowledge that they are standing with us in the maintenance of our common civilization. Especially I should like you to tender an expression of our cordial friendship to President Rush Rhees and the University of Rochester. The Universities of the United States and Canada will hereafter have closer affinities than ever.

"Yours sincerely,
(Signed) "ROBERT A. FALCONER,
"President."

FROM TORONTO'S MAYOR

The Mayor of Toronto, the Honorable T. L. Church, sends greetings:

"Dear Justice Riddell:

"I am glad to learn that you are to speak for Canada at Rochester on the occasion of the opening of the new Chamber of Commerce building there. Your eminent position as a Judge and your natural gifts combine to make it most fitting that you should represent our country at such an event.

"The cities of Toronto and Rochester lie on opposite shores of the same great lake, and their maritime commerce is carried on the same waters. Many social and other ties exist between their peoples and a mutually friendly feeling has always prevailed.

"The people of Toronto and of Canada cannot be unmoved witnesses of the entry of the United States into the war as one of our Allies. Its immediate effect is to re-unite Great Britain and the United States in all respects except the political relation. Fighting side by side for human freedom, making sacrifices together of blood and treasure, and having an identical aim, the accord of British and American hearts will never again be broken. The extent of the beneficial effect of that reunion upon civilization and the world no one can estimate.

"May I ask you to express to the Mayor and citizens of Rochester our congratulations on the opening of a new Chamber of Commerce building and our hope that the "Flower City" may be blessed in the future with even more abundant prosperity than in the past.

"Yours very truly,

(Signed) "T. L. CHURCH, "Mayor."

United States and Canada

I have been asked to speak on "The United States and Canada." I may not speak to you of commerce as it may be in the future. That is a political matter on which the lips of His Majesty's Justice are sealed. The commercial relations between the United States and Canada have in the past been almost absurd, whip-sawing one way and another. The United States would make an offer, only to have it rejected. Then when Britain and Canada had come to a better sense, the United States declined what they had formerly asked, and when the United States had come to a better sense, Canada declined, and vice versa, whip-sawing for seventy years. In 1854 it was thought that this was put an end to when that great treaty was put through, the Reciprocity Treaty. But this lasted only a few years the United States denounced it in 1866. Not that it was not fairly satisfactory, for, with a little amendment, it would have answered all legitimate purposes; but because this nation was angry at Britain for her conduct during the Civil War and wreaked a vicarious vengeance on the child for the mother's supposed sin. Perhaps now when the troubles of the neutral are better appreciated in the United States, opinions on the conduct of Britain will be more charitable. We sought again and again the reciprocity we had lost, but in vain-till at length we settled down to the struggle without it—and we "made good."

Then came the offer from your side—and we rejected it. But if 51 per cent of our voters decided that Canada would be better without reciprocity, that did not mean that they looked upon the citizens of this Republic with dislike. Business is business. We continued to regard you when we rejected your offer as you regarded us when you rejected ours. True, there are some with us who like to have a shot at the American Eagle as you have some who love to twist the Lion's tail—but on either side of the line these are negligible.

When this war began and Canada threw herself into the conflict with men and money the position taken by the United States was perplexing to Canadians.

WHEN CANADA EXULTED

Some jeered at the American love of wealth—I have not found any nation that is not fond of wealth: if there are any, they are the most degraded of savages who can have no wealth. But some of us who thought they knew the American people and knew that they loved the American people were astonished. We did not understand what was meant by neutrality in thought unless, indeed, it meant negation of thought, the easiest of all virtues and the most universally practiced. But we did not see what the great Master Workman was working out. We saw the threads but we did not know the pattern which was being worked—and when on second of April of the present year the most magnificent state paper that this continent has ever seen was read before the Congress of the United States, and the President challenged the United States to make the world safe for democracy, and asserted that the Autocrat was by nature necessarily a liar, and could not be believed, and the United States went whole heartedly to war, we saw the whole splendid pattern, and the heart of the Canadians exulted. Our brethren whom we misjudged. our brethren knew better what to do than we could possibly have told them. Our brethren knew the right when they asserted that they were going to fight for the right, and our hearts rejoiced with an exceedingly great joy. Oh! you sons of free America, do you understand the exultation and joy and delight with which the Canadians saw our brethren coming to our side and saying we are in this to the last—we will fight and bleed and if necessary die with you?

We yearn for peace—the world yearns for peace. Peace is impossible until such time as the nation whose national industry is war, until that nation whose national instinct is to steal from a peaceful neighbor and charge him with the theft, that brutal, hypocritical, lying, spying nation has either suffered utter defeat or has experienced a complete change of heart. Sir, the only peace which we liberty loving nations will accept, is the peace that kisses righteousness, for "the work of righteousness shall be peace; and the effect of righteousness quietness and assurance forever." It is pitiable, it were incredible, if it were not true, the peace kites flown, the peace balloons going up, the petty, silly, childish attempts to bring about a compromise. As though this were a war for money or territory; as though this were a war to determine whether A or B should be monarchs of such and such a piece of land and govern such and such a people; as though in this great war for principle we could ever have peace until that nation should learn that not armed force, military

power, braggart boasting of "mailed fist" and "shining armor," rattling of sabre in sheath—not these, but it is "righteousness" that "exalteth a nation." Sir, that is the kind of peace under which you and we have lived for over a hundred years.

SMELLS OF THE BOTTOMLESS PIT

There are but two principles of international conduct, but two principles that are worth while. One of these is, "Might makes right. Might is right. I can; therefore, I ought; and accordingly, I will." Easily understood; simple as A, B, C; but it smells of the bottomless pit. It is the principle of primeval man, who vindicated his rights by his own strong right arm; who followed the simple plan that "They should keep who had the power; and they should take, who can." It is impossible for a nation to live with such the governing rule; and accordingly courts of justice or of arbitration were introduced to introduce checks upon its operation, in order that there shall be no destruction by one member of the family, the sept, the clan, the nation of the other. As between nation and nation there is a dim sinulacrum of this in our international law, but after all it is but dim. There is another rule, "Right is right; and because right is right, to follow right were wisdom in the scorn of consequence." There are three ways in which a course of conduct may be right: It may be right because it is in accord with that moral law planted in every man's soul, that moral law which we Christians believe came from the throne of God Himself; or ethically indifferent a course of conduct may be right because it is in accordance with some law laid down by competent authority, or ethically and legally indifferent, it may be right because it is in accord with a bargain or contract which has been entered into; and that nation, man, however strong-brutally strong, however pious—overwhelmingly, ostentatiously pious, however learned—wearisomely learned, that nation which violates right, whether it be a moral right, a legal right or a right of contract is a criminal before the face of God Almighty, or—there is no God. Where nations agree to look upon that which is right as right, and to follow right, there are no difficulties. If there is dispute it can be determined by principles of right or wrong. Simple plain justice, and simple plain honesty are sufficient to reconcile all the disputes in this world, if men and women and nations are content to allow them to be so composed.

ENGLISH SPEAKING PEOPLE ARE ONE

Sir, it is upon that latter principle that your nation and mine have for over one hundred years governed themselves. We make a treaty; if we find the treaty is not interpreted in the same way by both parties, it is left to the interpretation of judges or of arbitrators. If the treaty does not cover matters in dispute between us, we make another treaty; and when we make a treaty we stick to it. A "scrap of paper where a name is set is strong as duty's pledge or honor's debt;" and because Britain with Canada on the one hand and the United States on the other have looked upon their treaties as sacred, and not as "scraps of paper" we have been able to keep the peace for these one hundred years. There have been disputes but none so bitter as to produce a resort to arms; there have been controversies, but none so severe that the cannon must be the arbiter; there have been misunderstandings, great misunderstandings, but none so great as that it was thought necessary that brother's hand should be dved in a brother's blood. While we have had our tiffs, as brothers or cousins have, between each other we have kept our bargains, and we have kept the peace. One would have thought that the example of great nations such as these nations, who had and cherished that chastity of honor which feels a stain like a wound, nations so strong that they need fear no foe; proud, wealthy, powerful nations, being content to govern themselves by the rules of ordinary honesty and simple plain dealing as between man and man, and so have kept the peace for one hundred years—one would have thought that no nation was so proud, that no nation was so strong, that it would despise the example of these.

But it was not to be—and the war has driven us into each other's arms. Sometimes I thank God for this war. I know not a day passes but some mother in Canada, scarcely a day passes but some mother in my own city, weeps for the son who has made the last sacrifice; not an hour passes but a Canadian is wounded—a Canadian's blood does not pass away; Canada is bleeding at every pore, proud of her boys, though with a broken heart: even so, I sometimes thank God for this war. The Kaiser builded better than he knew: The English speaking people are one. [Great applause; the audience rising to its feet and cheering.]

Oh, day which has been postponed for years! Oh, day which has been the subject of prayer throughout the English speaking world, the boast of the United States, Great Britain and Canada! At last our misunderstandings have passed away as mere nothings. We

have mourned the effects of that separation, which after all is but as of yesterday compared with the centuries of glory and pride which we have in common. Almost has passed away all feeling of that political separation, which is but skin deep, compared with that which is within, our fundamental and essential unity. And so we, Canada, your sister, and daughter of the great mother across the sea, holds out one hand to you and the other hand to her across the sea, and beckons the other free British nations to witness and rejoice in the reconciliation of mother with daughter. Verily the days are at hand when "they shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up sword against nation, neither shall they learn war any more."

THE WORLD OF THE FUTURE

But let us not forget our God-given task in that great future. My soul tells me as yours must tell you, that the future of this world depends upon the English speaking nations. But in that great future there will be another Germany; a Germany that has got rid of her paramount folly, a democratic Germany that has got rid of her "Kultur" rubbish; Germany will come back to the old, kindly, loving, simple hearted Germany; the indomitable perseverance, the strong sense of duty, the willingness to labor and faithfully, whole heartedly to serve the nation will make a new Germany, a greater and a nobler Germany, a Germany which will be loved and esteemed, and not hated and despised by the other nations of the earth. While we must strain every nerve to win the peace the terms of which we shall determine, while we must strain every nerve to see that it is an English speaking peace which is declared, let us not forget that there is good in Germany, and that Germany may in the future be a sister, instead of an outcast.

With a world-wide democracy, a world-wide brotherhood, the dream of the poet will come true for there will be seen on earth, the like of what he saw in the heavens, there will be seen living what he saw dead.

THE ARMY OF THE DEAD

I dreamt that overhead
I saw in twilight grey
The Army of the Dead
Marching upon its way,
So still and passionless,
With faces so serene,
That scarcely could one guess
Such men in war had been.

Chamber of Commerce Building

No mark of hurt they bore,
Nor smoke, nor bloody stain;
Nor suffered any more
Famine, fatigue, or pain;
Nor any lust of hate
Now lingered in their eyes—
Who have fulfilled their fate,
Have lost all enmities.

A new and greater pride
So quenched the pride of race
That foes marched side by side
Who once fought face to face.
That ghostly army's plan
Knows but one race, one rod—
All nations there are Man,
And the one King is God.

No longer on their ears
The Bugle's summons falls;
Beyond these tangled spheres
The Archangel's trumpet calls;
And by that trumpet led
Far up the exalted sky,
The Army of the Dead
Goes by, and still goes by.

Look upward, standing mute; Salute! The Relation of Government and Business for the Winning of the War

ROCHESTER DAY

WEDNESDAY, OCT. 3

PRESIDENT HARPER SIBLEY, PRESIDING

LUNCHEON 12:00 M.

RUSH RHEES, PRESIDENT, UNIVERSITY OF ROCHESTER

Brigadier-General Charles H. Sherrill, the Adjutant-General of the State of New York

DINNER 6:30 P. M.

Invocation—Rev. J. Francis O'Hern, Rector of St. Patrick's Cathedral

THEODOGE N. VAIL, PRESIDENT, AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Professor William R. McElroy, Director of Education, National Security League

JOHN H. FINLEY, PRESIDENT, UNIVERSITY OF THE STATE OF NEW YORK

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LANSING

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SOME MARRIAGES IN OLD DETROIT

By the Hon'ble William Renwick Riddell, LL. D., F. R. S. C., &c.

TORONTO

DETROIT, the City on the Straits, had interesting if not unique vicissitudes of fortune: at the end of the 18th century, there were many of her citizens of middle age who had seen her and lived in her under three flags.

From 1701 when Cadillac with his band of a hundred persons—soldiers, artisans, farmers, and a few women and children,—founded Detroit, until the surrender to Major Rogers in 1760, the banner of the French kings floated over the nascent city,—thereafter until the evacuation by the British, August, 1796, under the provisions of Jay's treaty, the meteor flag of Britain was displayed, and since that day the Stars and Stripes.

When the terms of peace between Britain and France were arranged in Paris in 1763, all the territory which was later Canada, and much more passed from France to Britain. Detroit and its dependencies were included in the cession as part of "Canada with all its dependencies."

The Royal Proclamation of October 7, 1763, created a "Government" or Province of Quebec, in which "all persons inhabiting or resorting to" it "might confide in Our Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of Eng-

land."³ This Province, however, did not contain all of Canada,—the Proclamation made its western boundary, the line from "the South End of Lake Nipissim" [Nipissing] to the point at which the line of the 45° N. L. crosses the River St. Lawrence.⁴ Accordingly Detroit was left out of the new Province and did not have the advantage of the King's promise of English law.⁵

When by the Quebec act of 1774 Detroit was taken into the enlarged Province of Quebec with much other territory, the same act provided that "in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada."

It will be seen that the civil law of England was never introduced into Detroit by Imperial legislation.

When the Province of Upper Canada was started on its separate career under the provisions of the Canada or Constitutional act of 1791, the boundary on the east had been fixed by order-in-council "at a stone boundary of the north bank of Lake St. Francis," but all of the former Province of Quebec (as constituted by the Quebec act of 1774) to the west of the Eastern boundary, fell into the Province of Upper Canada.⁷

The definitive treaty of peace between Great Britain and her revolted colonies was signed at Paris in 1783.

That treaty gave to the new nation, the United States of America, all the territory to the right of the Great Lakes and connecting rivers,—of course including Detroit and such of its dependencies as were on the same side of the river and lakes. But another article of the same treaty provided that creditors on

either side should "meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts" theretofore contracted.8 South Carolina, Virginia, Maryland, had passed legislation whereby the English creditors were impeded in the recovery of their debts; and these states refused to repeal the offensive statutes,—the still somewhat loose aggregation, the United States of America, could not compel them to do so,—the treaty was broken on the one hand, and Britain determined to hold the border posts to secure the performance by the United States of article IV. Detroit and other border posts were held by Britain for some years; and it was not until August, 1796, that the United States were allowed to occupy Detroit.9 Until August, 1796 then, Detroit was de facto part of the Province of Upper Canada from the creation of that Province by Order-in-Council, August, 1791; and the right of the Legislature of Upper Canada to legislate for Detroit was asserted in the plainest language and by unambiguous acts. The very first act of the Province of Upper Canada introduced the laws of England in matters of property and civil rights, 10 and Colonel John Graves Simcoe, the Lieutenant Governor of the Province, emphatically repudiated the idea that any other law should prevail in Detroit: he was supported to the full by the Administration at Westminster who said, "Settlers at Detroit and the other parts are subject to the laws of the Province . . . so long as the Posts are in our possession all persons resident within the same must be considered to all intents and purposes as British subjects."11

It is a principle of international law fully accepted by the English courts that where a country with anything that can be called civilized law is conquered, the existing law continues until it is changed by competent authority. On this principle, before the act of 1792 the French Canadian inhabitants of Detroit were entitled to their own Canadian civil law,—as neither the Royal Proclamation of 1763 nor the Quebec act of 1774 imposed any other. Let us first speak of the law of marriage before the coming into force of the Upper Canada statute of 1792.

The French Canadian law followed the Canon law of the Church of Rome, in which a marriage to be valid must be celebrated by a priest ordained by a Roman Catholic bishop,—marriages between French Catholics in Detroit in which the marriage ceremony was performed by a Roman Catholic priest had before the cession of Canada to Britain been and consequently continued to be valid.¹³

In the post itself, and among the soldiers, another principle might have been applied had the facts called for its exercise: within the lines of a British Army wherever serving, the soldiers and British subjects accompanying the army are not subject to the local law; but they may marry with the forms of their British law so far as it is possible to observe them and except in Scotland itself "British law" means English law, and "the King's troops . . . impliedly carry that law with them." 14

In the parts of the Detroit country which were not at all settled and which therefore might fairly be called a heathen country, the principles of English law declared that in the case of British subjects the same rule applied as in the garrison.¹⁵

By the English law (since the Reformation) the marriage ceremony must be performed by a priest or a deacon episcopally ordained.¹⁶

In the case of the garrison and those accompanying it, as well as in the case of British subjects in the wilds, there can be little if any doubt that a marriage ceremony performed by a priest or deacon of the Church of England would have been valid.

Merchants and others having no connection with the garrison were in different case. If they could induce a Roman Catholic priest to marry them, the marriage would be valid. This course would be unpalatable to all parties where the intending spouses were Protestant, and it had obvious disadvantages.

By a somewhat liberal interpretation of the rights of the military, it was considered that the English speaking inhabitants would be validly married if married in the same way as members of the garrison: it should be said, however, that some who were qualified to express an opinion, had serious doubts of the right of a garrison chaplain to perform the marriage ceremony. No question, however, was ever raised by the courts as to the validity of such a marriage,—and in our system of law it is the decisions of the courts which are binding and effective, not abstract principles or the opinions of text writers or commentators. If a garrison chaplain were available, therefore, there would be no great difficulty for anyone, for the Roman Catholic church always saw to it that the country was supplied

with priests of that communion, and Protestants could then go to the fort.

But in the early times of British occupation there was no garrison-chaplain in the upper posts, Niagara, Detroit, and Michilimackinac. As was most natural and inevitable there were young men and young women who desired to be husband and wife, and dire necessity drove many to irregular marriages. They would go before the officer commanding the post, and he would read the marriage office in the English Book of Common Prayer, using the ring and observing the other forms, sometimes the officer commanding would decline and the adjutant or the surgeon of the post would officiate. In Detroit the ceremony was often performed by a layman who had been appointed by the Protestant inhabitants to read prayers to them on Sunday, there were no Church of England clergymen stationed in this part of the country.

Later, after the definitive treaty, when the United Empire Loyalists were coming into the country, justices of the peace sometimes performed the ceremony in the same manner,—and after 1788 when a number of persons were appointed justices of the peace for the District of Hesse¹⁷ that was the usual practice.¹⁸

So far we have been speaking of marriage before the act of 1792,—after that act the law of England undoubtedly came into force throughout all the territory which was de facto part of Upper Canada, and all marriages of French or English, Catholic or Protestant were irregular unless the ceremony was performed by an Anglican clergyman either priest or deacon. Detroit and the District of Hesse were not singular in their

difficulties—the other Districts were in much the same condition. Not quite so bad indeed, because while Hesse had no Church of England clergymen up to the time the first Parliament of Upper Canada met, Nassau (the Niagara country) had a few months before got one, the Reverend Robert Addison of Niagara, and the two lower Districts Mecklenberg (Kingston) and Luneburg (Cornwall) had each had one from 1786.²⁰

But the situation was so grave that it imperatively called for legislative action, particularly when it appeared that two members of the Legislative Council, one of whom had been recommended as a Member of the Executive Council by Sir John Johnson and as a member of the Legislative Council by Dorchester and Simcoe, "an old and faithful servant of the Crown," also at least one member of the Legislative Assembly; and the only regularly called lawyer in the Province (except the Attorney General, White, who had come from England) had contracted such irregular marriages.²¹

A bill to validate these marriages in 1792 failed but another in 1793 was successful.²² The act of 1793 validated all marriages theretofore "publicly contracted before any Magistrate or Commanding Officer of a Post or Adjutant or Surgeon of a Regiment acting as Chaplain or any other person in any public office or employment." We should probably have known little or nothing of these marriages had it not been for the further provision of the statute for preserving the testimony of them; those who desired to preserve the testimony of their marriage were authorized within three years of the passing of the act to make affidavits

of the marriage and issue of such marriage before a magistrate in the form specified, and when certified by the magistrate administering the oath it was to be filed on paying a shilling fee to the clerk of the peace of the District who would enter it in a book kept for the purpose; and this was to be sufficient evidence of marriage and children in any court.

It has been known for some time that such a book was kept at Kingston for the Midland District (the former District of Mecklenburg): much of the material for the subsequent part of this paper is taken from a similar book kept for the Western District (the former District of Hesse). It is practically certain that a book of the same kind was kept for the Home District (the former District of Nassau): if it is not equally certain that one was kept for the Eastern District (the former District of Luneburg).²³

The act of 1793 was approved July 9, 1793, but it was not until the time allowed for making and filing the affidavits had nearly elapsed that advantage was taken in Detroit of the provision for preserving evidence.

1. The first to have such an affidavit filed was William Macomb of Detroit, one of the members of the legislative assembly for the County of Kent in the first Parliament of Upper Canada (Francis Baby being his colleague). Macomb swore at Detroit, February 17, 1796, that he publicly intermarried with Sarah Dring at Detroit, July 18, 1780, and that they had living issue, John, Ann, Catharine, William, Sarah, Jane, David, and Eliza. His wife swore to the same facts. Angus Mackintosh, J. P., certified to the affidavit and Walter

Roe, clerk of the peace for the Western District, registered them February 19, 1796.

2. After the Member of Parliament comes the lawyer, Walter Roe of Detroit, Barrister at Law, who intermarried at Detroit with Ann Laughton, March 1, 1790, and had living issue two sons John James and William: William Harffy, J. P., certifies to the oaths of Walter Roe and Ann Roe, February 16, 1796, and Walter Roe as clerk of the peace registers them, February 19, 1796.

The most interesting entry however, in respect of this marriage is the certificate of the Honourable Alexander Grant, member of the Legislative Council, who says:

"I do hereby certify to have joined Walter Roe of Detroit, Esquire, Barrister and Attorney at Law, in the holy bonds of matrimony to Miss Ann Laughton of the same place by their mutual consent and desire in the presence of Mr. John Laughton, her father, William & Sarah Macomb her friends & John and Susannah Sparkman her brother & sister in law at Detroit this first day of March, one thousand seven hundred and ninety.

Signed Alexander Grant, J. P., D. H."
i. e., Justice of the Peace, District of Hesse)

Signed John Laughton William Macomb Sarah Macomb John Sparkman Susannah Sparkman

Present.

3. William Hands of Detroit, Merchant, had intermarried at Detroit with Mary Abbott, December 10,

1789, and had living issue, Elizabeth, William, Ann, and Frances: William Harffy, J. P., W. D., certifies the oaths, May 30, 1796, and Walter Roe registers them next day.

- 4. A justice of the peace came next, Angus Mackintosh of Detroit, Merchant, who intermarried at Detroit with Archange St. Martin, June 17, 1783, and had living issue, Duncan, Alexander, Ann, Archange and Isabella. William Harffy gives his certificate, May 31, and Walter Roe registers the oaths, June 2, 1796.
- 5. Peter Laughton of the River St. Clair came in a little late,—he had intermarried with Catharine Harsen of St. Clair, September 14, 1788, and had living issue, Mary, John Bilton, David and Peter: the oaths were certified by William Park, J. P., W. D., September 26, 1796, and entered in the book by Walter Roe, quantum valeat.²⁴

By this time the evacuation of Detroit and the territory to the right of river and lake was complete; those who so desired crossed the river into British territory: and of those who remained, such as within a year after the evacuation declared their election to remain British subjects could do so with effect.²⁵

6. One of those who passed over the river was Gregor McGregor who had been superintendent of inland navigation when he was appointed by Dorchester in 1788, sheriff of the District of Hesse. He had taken the affidavit of marriage in time, May 1, 1796, at Detroit before Thomas Smith, J. P., who had been clerk of the court of common pleas for the District, but he had omitted to have it registered. In 1797 there was considerable agitation over the marriage

question, and an act had been passed by the legislature which, however, had been reserved by Peter Russell, the administrator, for His Majesty's pleasure. This act had been passed "to extend the provisions of" the act of 1793; and while there were in it no such express words, it seems to have been considered as extending the time for registering affidavits under the earlier act.²⁶

"Gregor McGregor, County of Kent, Esquire, Lieutenant Colonel of the Kent Battalion of Militia" swore in Detroit he had intermarried with Susan Robert at Detroit, August 12, 1776. Susan Robert swore the same; living issue were James, Anne, Susan, Catharine, and John; Thomas Smith, J. P., W. D., gave his certificate and Walter Roe registered the documents, September 8, 1798. Thomas Smith had also crossed the river; he became member of the legislative assembly for the County of Kent.

7. Another who left Detroit was John Askin; he went to Sandwich and there, February 27, 1798, swore before William Harffy, that he had at Detroit, June 21, 1772, intermarried with Archange Barthe, and there were living issue Therese, Archange, Allice, Charles, James, Phillis Eleanor, and Alexander David. Walter Roe registered these affidavits, January 26, 1799, without a certificate from the magistrate. This marriage in 1772 is the earliest of these irregular marriages of which we have any trace.

8. One who took an active part as magistrate in performing irregular marriages and as member of parliament in having them confirmed, now appears.

"Alexander Grant, Esquire, Member of the Execu-

tive Council and Commandant of the Marine Department on the Upper Lakes," also member of the legislative council, who afterwards in the war of 1812 was, at the age of 85, after a devoted service of 50 years, commodore on Lake Erie and died from overexertion during that war, swore February 27, 1798, that he had at Detroit, September 30, 1774, intermarried with Therese Barthe, and had living issue, Therese, Archange, Phillis, Arabella, Anne, Elizabeth, Nelly, Alexander; and Maria his wife made the same affidavit. The Magistrate, Thomas Smith, at Sandwich did not give a certificate, but Walter Roe registered them, January 26, 1799.

9. John Sparkman we have met before: he was present at the marriage of his sister-in-law²⁷ Ann Laughton, March 1, 1790, to Walter Roe; he was barrack-master of the garrison of Detroit and consequently could lawfully have been married by the chaplain of the garrison if there had been such an officer,—there was not: he accordingly swore that, December 17, 1787, at Detroit, he intermarried with Susannah Stedman, living issue being Elizabeth, James and Phillip Stedman. The affidavits of Sparkman and his wife were made at Detroit, April 26, 1796, before the evacuation: certified to by Alexander Grant, they were registered by Walter Roe, January 28, 1799.

11. John Askin of Amherstburg, at Detroit, October 21, 1791 intermarried with Madelaine Peltier; he made an affidavit to that effect as did his wife, September 26, 1803, before William Caldwell, J. P., who gave his certificate the same day Askin produced to the new clerk of the peace, James Allan, a certificate from

- "Alex Grant, J. P. for Upper Canada" as follows: "I do hereby certify that I married John Askin, Junr., to Madelaine Peltier, the twenty-first day of October in the year of our Lord one thousand eight hundred and ninety-one": and James Allan registered the documents, October 1803.
- 12. Timothy Desmond swears he intermarried with Barberry Desmond at Detroit, September 13, 1792, before William Harffy, J. P. and that there are issue: William, John, Mary, Ann, and Lucie: so does Barberry: both make their mark before William Shaw, J. P., Camden, August 13, 1806, and though there is no magistrate's certificate, Allan registers the documents, August 28, 1806.
- The next marriage to be noted is very inter-The Act of 1793 authorized magistrates to esting. perform the marriage ceremony if there was "No Parson or Minister of the Church of England" within eighteen miles of either of the intending spouses,he was to give a certificate and the certificate could be registered by the clerk of the peace. The entry is as follows: "Whereas Robert Surphlet and Margaret Pike were duly married on the fourteenth day of March, 1785, by Alexr. Macomb Esquire, of Detroit, and have ever since lived together as husband and wife. but having neglected in due time to preserve the testimony of such marriage as prescribed by an Act of the Provincial Parliament of Upper Canada. to certify that in pursuance of the powers granted by an Act of the Legislature of the Province passed in the thirty-third of His Majesty's Reign, I, Prideaux Selby, one of His Majesty's Justices of the Peace, having

caused the previous Notice required by the Statute to be given I have this day remarried the said Robert Surphlet and Margaret Surphlet together and they are become legally contracted to each other in marriage.

Petite Cote, 2nd March, 1801.

(Sd) Robert Surphlet

(Sd) M. Surphlet (Sd) P Selby

Present at the above marriage

(Sd) Timothy Murphy

(Sd) Elenor Murphy

Registered at the request of Mrs. Margaret Pike this 18th of March, 1801 (Sd) W. Roe, C. Pe. Wn. Dt."

The same Magistrate on the same day at the same place in the presence of the Surphlets as witnesses remarried Timothy Murphy and Eleanor Murphy who had been married by William Park, J. P., at Detroit, May 4, 1794,—the first marriage was after the act of 1793, and consequently valid, but the parties had not registered it—now Walter Roe registered the certificate "at the request of Mrs. Eleanor Murphy this 4th of April, 1801."

The last entry of this kind to be noted was much later: and it recalls a romance of early frontier life.

The celebrated Simon Girty, the so-called renegade, a noted Indian fighter, had himself been a prisoner of the Indians as a boy and was well acquainted with their language and customs. In 1783 or 1784, visiting a town of the Munceys on the Scioto river he met a white captive of the tribe who had been adopted by an Indian family. Three years before, Catherine Malott accompanying her father and mother from Maryland,

being then a girl of fifteen, had been taken prisoner by the Indians when a passenger in a flat boat upon the Ohio a few miles below the present city of Wheeling. Girty and Catherine fell in love with each other, and Girty procured her release from captivity. He took her in the Fall of 1784 to his farm in the present township of Colchester: and they were there married by an English Church clergyman, a missionary at that point.

Girty died in 1818 and his widow claimed dower in some of his lands,—but there was no record of the marriage, and the clergyman was no longer available to prove it. The legislature in 1818 had passed an act extending the time for registering such affidavits for three years²⁸ but she had not taken advantage of that act.

In 1831, however, the time was extended for six years²⁹ and now the widow took action. She appeared May 19, 1832, before William McCormick, J. P., at Colchester and made the following affidavit.³⁰

"I, Catherine Girty, do solemnly swear that I did publicly intermarry with Simon Girty at the mouth of the Detroit River now the Township of Malden, in the summer of the year of our Lord, 1791, and there is now to me living issue of said marriage, viz: Sarah now the wife of Joseph Munger, born on the 18th day of April, 1792, and Prideaux Girty, born on the 20th day of October, 1796, and that such marriage was solemnized by Frederick Augustice Norstbaugh, Church of England Clergyman of the new settlement, now the Township of Colchester in the County of Essex and Western District of Upper Canada."

The affidavit being certified by Mr. McCormick was registered in "Marriage Register A" by Charles Askin, clerk of the peace for the Western District, on October 24, 1832; and Catherine Girty's status as lawful wife was conclusively established.

Thus an act intended to validate irregular marriages became the means of proving one which was regular. Unfortunately her claim for dower failed on other grounds, for William Mickle had a perfect defence.

I have said nothing of the doubt entertained by some lawyers and others of the right of Church of England Clergymen to celebrate matrimony at that time and in that country. This would involve the discussion of legal principles, quite foreign to my subject. Of lawful marriages in Detroit by magistrates after the act of 1793 we find only one recorded.³¹ Allan Bellingham of Detroit, Gentleman, was married to Monica Baby of Detroit, Spinster, by William Park, J. P., March 22, 1795, "there being no Parson or Minister of the Church of England living within eighteen miles of them." But there were many across the river which are outside the scope of this paper.

No disgrace attached to a "Magistrate's Wedding." August 4, 1801 the marriage at Sandwich of William Smith and Mary Cowan of the same place by William Hands, J. P., was attended by the Chief Justice, John Elmsley and the Solicitor General, Robert Isaac Dey Grey, who were attending the assizes for the Western District and who (with others) signed the certificate as witnesses.

Notes

'The Treaty of Paris concluded February 10, 1763, says in Art. IV: "...: Moreover his Most Christian Majesty cedes and guarantees to his said Britannic Majesty in full right, Canada with all its dependencies." Shortt & Doughty, Documents relating to the Constitutional History of Canada 1758-1791, 2nd Ed., Ottawa, 1918 p. 115—a most valuable work, a credit to its learned editors, to the Canadian Archives and to Canada—(cited as Const. Docs.).

²The Articles of Surrender by the Marquis de Vaudreuil at Montreal to General Amherst, September 8, 1760, had provided by Art. III for the surrender of the posts "situate on our frontiers, on the side of Acadia, at Detroit, Michilmaquinac and other posts". Const. Docs., pp. 2, 25. It was under this surrender, that Major Rogers acted in demanding and receiving possession of Detroit later on in the same year. The expression "Detroit and its dependencies" was frequently used in after years. The "dependencies" were the settlements on either side of the river through its whole extent from Lake Huron to Lake Erie, and an indefinite extent of territory besides: perhaps the only definition which can be given is "the territory which looked to Detroit for protection." The term was not only indefinite but broad, e. g. the fort at the falls of the Maumee was considered a dependency of Detroit.

³Const. Docs., p. 165. This has always been considered to have introduced the English law, civil and criminal, into the Province created by this proclamation.

⁴Const. Docs., p. 164. The line crossed the St. Lawrence about the present Town of Cornwall, Ontario: a considerable part of the present Province of Ontario being east of this line was consequently included in the original Province of Quebec; there were, however, very few inhabitants in the territory so included.

This was not an inadvertence: the Lords of Trade in their letter, June 8, 1763, to the Earl of Egremont (who had succeeded October 9, 1761 to William Pitt as Secretary of State for the Southern Department and who was in charge of the American Colonies) recommended that to take full advantage of the fur trade which next to the fisheries was the most obvious benefit to Britain of the Cession of Canada, certain territory should be left to the Indians for their hunting grounds; no settlement by planting should be, at least for a time, attempted there, and "no particular form of Civil Government . . . established." It was recommended that "a free trade with the Indian tribes should be granted to all Your Majesty's Colonies and Subjects under such regulations as shall be judged most proper for that end and under the protection of such Military Force to be kept up in the different Posts and Forts as may be judged necessary." Const. Docs., pp. 136, 138. And it was recommended to make the western line of the settled government where it was afterwards actually placed,—ibid, p. 141.

*(1774) 14 Geo. III, c. 83, (Imp.) this made the boundaries of the Province run from the point at which the 45° Parallel N. L. meets the river St. Lawrence from the east, then westerly along the east bank of the river to Lake Ontario, through Lake Ontario and the Niagara river along the east and southeast bank of Lake Erie to the western boundary of Pennsylvania, southerly along this to the river Ohio, then down along the bank of the Ohio to the banks of the Mississippi, then northward to the Hudson's Bay Company's territory ("northward" was interpreted to mean "up the Mississippi") Const. Docs., p. 571. The section as to laws, &c., is usually given as sec. 8—but the act is not always printed with the section numbered. Ibid, p. 513.

⁷The Canadian or Constitutional Act is (1791) 31 George III, c. 31 (Imp.), ibid., pp. 1031-1051: the Order in Council, August 24, 1791, 4th Report Archives of Ontario (for 1906) pp. 158-160: the Royal Message of Intention to divide Canada, February 25, 1791, 4th Rep. Arch. Ont. p. 158: 28 Hansard, Ho. Com. Deb. p. 1271.

⁵For the Definitive Treaty of Paris see *Treaties and Conventions of the U. S. A.*, Washington, 1889, pp. 375-379: *Const. Docs.*, pp. 726-730. The article fixing boundaries is Art. II, that concerning debts, Art. IV:

⁹By Jay's Treaty concluded November 19, 1794, Treatics and Conventions, pp. 379-395.

The United States undertook to pay these debts when ascertained by arbitrators, and Britain agreed to give up the territory held by her. The troubles of these arbitrators are told in my paper before the Royal Society of Canada, "When International Arbitration Failed," 40 Can. Law Times (1920), pp. 351, 360. The arbitrators could not agree and the United States ultimately by the Convention of January 8, 1802—Treaties and Conventions, pp. 398, 399—agreed to pay £600,000 sterling in three equal annual installments of £200,000 each,—the £ sterling being reckoned at \$4.44 of U. S. money.

19(1792) 32 George III, c. 1, s. 3 (U. C.); the act was passed at Newark (now Niagara-

on-the-Lake, until 1797, Capital of the Province) October 15, 1792.

"Captain Stevenson an active officer who had accompanied Simcoe to Canada and was much in his confidence, was entrusted by Simcoe with despatches in November, 1792, after the session of parliament, as he was going to England: Simcoe in an official letter said that Stevenson was in a position to give any information concerning the statutes, etc., desired by the Secretary of State for the Home Department (then in charge of the Colonies): Stevenson in Simcoe's name suggested to Henry Dundas (afterwards Lord Melville) the Secretary of State, that the French Canadians at Detroit might be allowed their own laws: Dundas, October 2, 1763, sent a dispatch to Simcoe in which the words quoted in the text are employed. Can. Arch. Q. 279, 1, 251, 264. When Simcoe received this letter he indignantly repudiated Stevenson's suggestions and conduct and although he had thought so much of him as to recommend him for the position of deputy quarter master general he spoke of his suggestion as that of "a hasty inconsiderate person, scarcely endowed with common sense." Can. Arch., Q. 280, 1, 106. Letter Simcoe to Dundas, York, February 28, 1794. J. Ross Robertson's Diary of Mrs. John Graves Simcoe, Toronto, 1911, pp. 43, 59, 139.

¹²The celebrated case of Campbell v. Hall (1774), Cowper's K.B. Cases, 204: Lofft's Reports, 655, "very elaborately argued four several times" before the Court of King's Bench at Westminster, decided this once for all. Lord Mansfield delivered the unanimous opinion of the court, which is a legal and constitutional classic.

¹³I have myself no doubt of the validity of such marriages: but I have heard very

good lawyers deny or at least query.

"While the authorities speak only of an army of occupation or otherwise in a foreign country, the same principle must apply to an army post anywhere. See Westlake's Private International Law, 5th Ed. 1912, p. 72. I follow sec. 31 almost verbally; King v. Brampton (1808), 10 East's Reports, 282, lays down the law clearly. Ruding v. Smith, 2 Haggard's Consistory Reports, 393. See also Burn v. Farrar (1819), 2 Haggard's Consistory Reports, 369, in which Sir William Scott (afterwards Lord Stowell) doubts whether an English officer in the army of occupation at Paris was at all subject to the French law. There would not now raise even a doubt: as Lord Ellenborough, C. J. said in King v. Brampton, 10 East at p. 238, "the law of England, ecclesiastical and civil, was recognized by subjects of England in a place occupied by the King's troops who would impliedly carry that law with them." It is possible that a marriage by a Presbyterian minister following the Presbyterian ritual would be equally valid with one by a clergyman of the Church of England where no statute interfered; Catterall v. Catterall, 1 Robertson's Reports, 580; 5 Notes of Cases, 466; it is unnecessary to pursue this enquiry.

15I know of no binding and authoritative statement of the law in that regard: but the general opinion is as stated in Hammick's Laws of Marriage, 2nd Ed., 1887, at p. 266. "There is little doubt that in a heathen land, marriages between British subjects may lawfully be celebrated by a clergyman of the Church of England either on board

ship or on shore."

¹⁶Before the act of (1753), 26 George II, c. 33, a marriage in England by a Roman Catholic priest after the English ritual, though irregular, was not void, although it probably would have been had the Roman Catholic ritual been employed. Scrimshire v. Scrimshire, 2 Haggard's Consistory Reports, 404, Since Reg. v. Millis (1844), 10 Clark & Finnelly's Reports in House of Lords, 534, "it must be taken that there never could have been a valid marriage in England before the Reformation without the presence of

a priest episcopally ordained or afterwards without the presence of a priest or of a deacon." Beamish v. Beamish (1861), 9 House of Lords Cases, 274.

¹⁷Lord Dorchester, Captain General and Governor-in-Chief of the Province of Quebec, by Letters Patent, dated July 28, 1788, divided that part of the Province which afterwards became Upper Canada into four Districts,—Luneburg, Mecklenburg, Nassau and Hesse: Hesse, which in 1792 became the Western District of Upper Canada, extended from the extreme projection of Long Point into Lake Erie to the west of the Province. This District included Detroit. *Const. Docs.*, pp. 953, 954, 4th *Rep. Ont. Arch.*, (1906) pp. 157, 158.

For the District of Hesse the following were appointed justices of the peace, all well known men of the time: Alexander Grant, Guillaume La Motte, St. Martin Adhemar, William Macomb, Joncaire de Chabert, Alexander Maisonville, William Caldwell and Mathew Elliot. Can. Arch. Q. 39, p. 134. 11 Mich. Hist. Coll., p. 622.

¹⁸See the Honble. Richard Cartwright's Report to Lieutenant Governor Simcoe, Can. Arch., Q. 261, 1, 169, printed in full in note 6 to my Article "The Law of Marriage in Upper Canada." 2 Can. Hist. Review (September 1921), pp. 241, 242.

¹⁹The Territory of Michigan did not recognize this act as legally and effectively abolishing the French Canadian law,—but the territorial legislature in 1810 passed a statute expressly repealing the Coutume de Paris, Lorman v. Benson (1859), 8 Mich. 18, at p. 25: Coburn v. Harvey (1864), 58 Wis. 146 at p. 158. Dr. Sherman in his splendid work, Roman Law in the Modern World, Boston 1917, Vol. 1, p. 251, sec. 263, mentions the fact of repeal but says nothing of the reason for it.

²⁰See the Report of Hon. Richard Cartwright mentioned in note 18 supra.

²Indeed Simcoe in an official despatch to Dundas, Navy Hall, (Niagara) November 4, 1792, says "almost all the Province are in that predicament." *Can. Arch. Q.* 278, pp. 79ff. At Detroit two out of the four English speaking magistrates appointed in 1788 for the District of Hesse and the only lawyer were "in that predicament" as will appear later in the text.

²²See my Paper referred to in note 18 supra for a full account of the legislative vicissitudes of these bills. This Paper contains a full historical account of the legislation upon the subject of celebration of marriage in the Province of Upper Canada. The act of 1793 is (1793) 33 George III, c. 5, (U. C.): the validating section is sec. 1, that for preserving testimony of them is sec. 2.

²³The first account in print of the Midland District book (so far as I know) was my article in Volume 51 of the Canadian Magazine (September 1918), pp. 384-386, "Marriage in Early Upper Canada." See also my paper referred to in note 18 supra. The Western District book had escaped my research: it was brought to my attention by Andrew Braid, Esq., secretary of the Essex Historical Society, Windsor, Ontario, who was good enough to procure for me a personal examination of it. I wish to express my appreciation of and thanks for his kindness and courteous consideration.

In the Midland District book are only two marriages recorded, Richard Cartwright of Kingston, who was a legislative councillor, and Magdalene Secord at Niagara on or about October 19, 1784 who had living children James, Richard and Hannah; and David McCrae and Erie Smyth at Michilimackinac, October 13, 1783, who had living children William, Sophia, Frances and Amelia.

²⁴Roe while he copied the oaths of Peter and Catharine Laughton and the certificate of Park did not certify that they were registered,—no doubt because the three years allowed by the act had gone by and the entry was therefore irregular and without legal justification.

²⁵Jay's treaty concluded November 19, 1784, *Treaties and Conventions of the U. S. A.*, pp. 379 ff, Art. II, provides for evacuation by June 1, 1796, and retention of allegiance on the terms set out in the text.

²⁶This act was passed in 1797, but the royal assent was not promulgated by proclamation until December 29, 1798, and it is quoted as (1798) 38 George III, c. 4 (U. C.)

27How he and his wife were brother and sister-in-law of Ann Laughton as certified by

Grant, does not appear,—perhaps his brother had married her sister. Sparkman was afterwards, and as late as 1807, deputy barrack master at Amherstburg, Can. Arch. C. 673, p. 106: 15 Mich. Hist. Coll., p. 41.

²⁸(1818) 59 George III, c. 51 (U. C.)

29(1830) 11 George IV, c. 36, s. 2 (U. C.). The act came in force March 2, 1831, but was passed in March, 1829, and was reserved for the royal pleasure.

30It is quite certain that the date 1791 which is interlined is a mistake,—her first child who died in infancy was born in 1785; Ann, who afterwards married Peter Gouvereau, in 1786; Sarah afterwards Mrs. Munger, in 1791; and Prideaux in 1797.

31 There may of course have been many more which were not recorded by the clerk of the peace in his book.

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Edited By

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POST-WAR PROPHECIES

By HON. WILLIAM RENWICK RIDDELL, LL.D.

whether the present League of Nations be adopted or not; the peace of the world, the whole future of the world will ultimately rest upon something quite other than the League of Nations—it will rest upon the peace, the harmony, the soul-unity of the English-speaking peoples. This is no new thought. More than a hundred years ago, Richard Rush, long the American Ambassador to London, the Rush who in 1817 as Acting Secretary of State agreed with Charles Bagot in passing the Rush-Bagot Convention whereby our international waters were freed from the pollution of armed keels, said, "Let the peace between the United States and England be broken and the arch which supports the peace of the world falls in ruins."

And if that were true (and should have been manifest), a century ago, how much more manifest is it today?

No one needs to wonder at the love for France in this great Republic—for did not France play a noble part in the struggle for independence of the Thirteen Colonies? But the feeling for France is largely superimposed—her people are of a different race, her language is strange, her customs not the same, whereas the English-speaking peoples wherever they may be found are of similar origin, largely of the same stock, and their language that which the American learns at his mother's knee—bone of his bone, flesh of his flesh.

Of course, as in families, quarrels will arise, misunderstandings, even fierce disputes, but they are family quarrels, disputes which we arrange ourselves and in which we brook no interference of the outsider. In Britain the humiliation

of defeat a century and a half ago is lost in admiration and pride in the progress of her mighty offspring. Washington is a national hero across the sea, he is looked upon as an English general, an English statesman, an English patriot, just as he lived and died an English gentleman. I can conceive no reason why Americans should rancorously brood over the events of the Revolution or treasure enmity against the Old Land or her people. That prejudice, almost dead before the war and apparently absolutely killed by the war, is notoriously being revived by certain classes —it is the devil's work, this keeping alive and increasing those feelings of enmity and distrust which are a curse to all English-speaking peoples. But the devil is stupid, as he always was—the people of the United States have been too busy to give much attention to these plotters and mischief makers; but sometime they will get around to them and they will disappear-spurlos versenkt.

UNITY OF ENGLISH-SPEAKING PEOPLES

For more than a century there has been peace among the English-speaking peoples; the example of such nations strong and high spirited, with that chastity of honor which felt a stain like a wound, it can be no disgrace for any nation however proud, however strong to follow—nay, to be forced to follow however unwilling. We must not again have the old weary round—peace, ambition, arrogance, unreasonable national claims, and war. Never again is it to be the age-old Burden of Dumah "Watchman what of the night! Watchman what of the night?!" and the reply "The morning cometh and also the night." The morn has come and there must be no more night of blood and agony and death.

As it has been the privilege of the English-speaking peoples to set that great example, it must be their task to see to it that the example is followed by others.

It is said that had the Kaiser believed that Britain would go to war, he would not have declared war. That is probably true. It is certainly true that if, in July, 1914, the Kaiser has foreseen that the United States would sooner or later, and in any case before the end, be found fighting by the side of Britain, he would never have had a war. Wilhelm took himself seriously, indeed believed, really believed, for there was no pose about it, that his people were supermen and he a divine agent; but, crazy as he was with arrogance and pride, he had gleams of reason; he was not so crazy as to imagine that he could make headway against such a combination.

That very great American who has just passed from us, the American who seemed to typify the American spirit more than any other man of our generation, one whom I loved as a brother and differed from on almost every conceivable question, when inspecting the Canal Zone gave utterance to a sentiment in which I think all agree. We are told that making an inspection of the wards of Ancon Hospital, C. Z., the commanding officer accompanying him explained the classifications of the occupants stating the terms "American Medical Ward," "American Surgical Ward," etc. On approaching another the introduction was "Foreign Surgical Ward." On their entrance an ex-soldier of the British army saluted. This arrested his attention and he, returning the salute, spoke to the patient asking several pertinent questions, at the close of which he turned to the C. O. saying: "Did you tell me this is the foreign ward! What is this patient doing here? No Britisher is a foreigner to an American. Have this man transferred to an American Ward."

These words of Theodore Roosevelt contain a pregnant truth—and thank God for that truth!

If an Englishman cannot be a foreigner to an American, what of the Canadian?

Canadians we are to the finger tips and proud of it, British we are to the last drop of our blood and with no desire to change our position, yet, born on this great Continent, we have from infancy breathed her free air, we have joint possession with Americans of her mighty territory, and we are joint custodians of her mighty destiny. Americans we are not; but in the highest and best sense of the word we are American.

With negligible exceptions American statesmen, American leaders of public thought in universities and elsewhere, American writers, American poets are in harmony with that thought.

Divided as we are in political allegiance, strangers to each other by international law, we are united by a higher law—the very statute of Heaven itself, the eternal rule that like will like like.

Eleven years ago, before an American audience, I ventured to say:

"Many a heart, not American, was glad when this nation acquired territory not on the North American Continent-knowing that this of necessity meant that the United States with or without her desire must now take some greater part in world-politicstake her share of 'the white man's burden.' And when she began to build a navy commensurate with her greatness and importance in the world some saw with the eye of faith two twin fleets sailing forth together under the flags which float over kindred freementhese fleets bearing the single mandate, 'There shall be no more war.' My Sovereign, who amongst all his titles, treasures most that which is unofficial, Edward the Peacemaker, has his due influence in preserving peace; the President of the United States, perhaps as much, possibly still more. Some there are, however, who recognize only force. But when such a fleet shall sail with such a mandate, there will be no more war-or only one. They who are mad enough to disobey the command of the Admirals of that united fleet, will bitterly rue their temerity—and their disobedience will be the last."

The world has changed much in these eleven years, we are in a new world and many old things have passed away—but were I called upon again to prophesy, I should say the same but even more emphatically—whatever else may be said of military and naval strength, the combined fleets of Great Britain and the United States can command and en-

force peace at the peril of war unutterable, of annihilation of the recalcitrant.

And somehow, in some combination, on some terms, written or implied, these fleets will be found ready, and ready to act together in the greatest of all causes to prevent war, the sum of all iniquities. Canada will be there bearing her full share. The pomp and circumstance of glorious war, grim visaged war, the mighty scourge of war, can never again be the idol of the nations—true, the Junker whose trade is war, whose training is war will, like the arch-fiend, give his counsel for open war—but his day is done.

THE BOLSHEVIST "SUPERMAN"

War between the nations coming to an end as soon it must, what of war within the nations? After every great war there has been unrest discontent with former and existing conditions—that is raos, natural and to be expected but there never has been anything like the present. A whole nation of hundreds of millions seem to have gone insane and certainly those who have the power profess a political creed, a system of social ethics, which to any reasonable mind is madness itself and based upon the most fantastical conceptions. A revolution, ostensibly for the working man and the farmer, compels the former to work for wages, for the hours, at the work prescribed for him, orders the latter to deliver over the produce of his labor for a price in fixing which he has no voice. Revolting against the tyranny of the Czar which banished plotters to Siberia, those at present in authority prescribe the penalty of death for all who disobey-nay for all who speak or write in opposition to their directions. Revolution ostensibly to bring about peace, the present rulers shoot a deputation of soldiers craving peace with Poland. With a stern hand destroying the thief, they also destroy the Czar and his innocent children. All this might be no concern of the rest of the world; but the same Government which has no means to prevent

starvation at home has thousands and millions to spread its noxious doctrines in other countries—to England they come to bribe workmen and the workmen's journals, through Canada to the United States, through the United States to Canada. Wholly ungrateful, for did not the United States ask for and obtain the release of Trotsky from Canadian arrest and thereby enable him to do his fearful work in Russia? and did not the United States protect and foster Lenin in his day of poverty and weakness? And were not thousands sheltered by Britain and by Canada? Wholly ungrateful, they seem to have made an especial onslaught upon the English-speaking peoples.

This movement is directed to the destruction of everything upon which we have prided ourselves—our civilization, our security for person and property, our system of government, our democracy and our rule by majorities without disregard of the rights of minorities—avowedly destruction is sought, root and branch destruction—in order that a new tree may be planted—that the absolute government of one class may prevail. No longer do we hear of the Rights of Man but of the rights of a class—men are not created equal, they are not endowed by the Creator with unalienable rights, they have no right to life, liberty or the pursuit of happiness. A new class of superman is formed who have all the rights, the rest of the world only duties.

There is a democracy worth having and the world must be made safe for that democracy, but this travesty of a democracy is a democracy from which the world must be saved, or otherwise all the gain of the centuries is lost and chaos is come again.

"PARLOR" AND REAL BOLSHEVIKS

You will probably think that the "parlor Bolshevik" may in most cases be neglected. He is a "cootie," a parasite, who repays warmth and comfort and protection by petty annoyance and irritation, very occasionally he may carry a

deadly germ; but it is rare that he has blood or brains enough, Let him go, he is a nuisance, nothing more; or better—devise some scheme whereby he may have an opportunity to try the desiderated rule—have him quietly deported and give him the experience of being forced to join a Bolshevist labor battalion on penalty of starving as was the cruel fate of the hundred or more enthusiasts recently deported from the United States. It is said that their idea of a Bolshevist practice was rudely shattered and they longed for the ease, comfort and security of the land which they had troubled and whose laws and government they had repudiated with bitter curses.

And, law-abiding man as I am, I could not feel alarmed or shocked when I read that on Armistice Day in London some of the decent women of that City spanked Sylvia Pankhurst's ill-mannered and worse-principled crew.

But the real, the working, Bolshevik is another matter: often a fanatic, generally skilful or at least cunning, he is always a real danger. He makes common cause with laborers, he pretends to share their burdens, and he infects them with the most deadly poison. Claiming at every turn the protection of the Constitution and the law, he preaches subversion of the Constitution and contempt for all law.

England has her hands full with them, treacherous, wholly unreliable; and we on this Continent must be on the alert—in the face of our common danger we must work all together. It is such an assault on all that we hold dear which must make us work together—it is the Anglo-Saxon conception which is attacked and there can be no discharge in that war.

We live side by side in peace and amity, and almost as one people. An American finds himself at home in Canada, a Canadian in the United States. We exchange our products, natural and otherwise, the United States give us a Van Horne and a Lord Shaughnessy and we give the United States a Franklin Lane and an Admiral Sims. We feel more and more our unity, a unity which depends not on

descent, although both peoples have much the same ancestry and there is that in blood which will not down—nor on language, although identity of language is of tremendous import—nor on religion and what is more powerful than religion?

Race, language, religion, all are significant—immensely significant, but they are not everything; they are not even crucial.

What binds us and unifies us as one is our common conception of human rights—individual rights—and the relative rights and duties of the state and the individual.

While we proudly sing

"We must be free or die who speak the tongue
That Shakespeare spoke; the faith and morals hold
Which Milton held—in all things we are sprung
From Earth's first blood, have titles manifold,"

there is nothing so strange or so transcendent in our conceptions as that they may not be fully comprehended and firmly held by a Chinese, a Buddhist, one speaking in a Turanian tongue.

There still exists an unending conflict between ideals of the state and of the individual, their relative rights and duties. That the state is a reality differing from and in some sense transcending any present aggregation of changing and perishing individuals all will admit—but its true function is not universally agreed upon.

Plato sought in vain for a divine Revelation in the universal sentiments of all peoples and nations, Semper, ubique et ab omnibus—he found it not.

TRUE FUNCTION OF THE STATE

Since primeval days there have been and are still the two irreconcilable views of the true function of the state—and we, all the English-speaking peoples, have adopted the same. We hold that the state exists for the individual, to keep the peace, to prevent the settlement of disputes by

the strong arm, to force arbitration or judicial determination of differences, to prevent aggression on the weaker, the satisfying of wants or greed by stealthy larceny or open robbery, to encourage industry, integrity and peace among its people. The state owes all these duties to the citizen—the citizen owes nothing to the state but loyal assistance in the performance of its duties—the state does not transcend the individual. The citizen has the fullest right of action consistent with the similar, the identical, rights of other citizens. That is liberty—all else is slavery open or disguised. We "acknowledge liberty with audible and absolute acknowledgment and set slavery at naught for life or death." That is the democracy that is being attacked. What are our defences?

There is, perhaps, no need or little need of further legislation, in Canada at all events. We have laws sufficient to meet all cases. There may be real need of co-operation. Situated as are the two English-speaking countries of this Continent, they have ideal conditions for unity of action. We have no difficulty in preventing the honest workman coming into either country under contract express or implied to perform honest work. Can we not prevent the dishonest workman entering either country under contract express or implied to do the fiendish work on which he is set? We have no difficulty in excluding the blind, the diseased, who seek out shores as a haven leading to relief from poverty; can we not succeed in excluding those blind to the advantages of our democracy, diseased with the worst of all antisocial diseases, who seek our shores as a vantage ground upon which to work to inflict poverty and woe upon all?

All this lies before us sun clear—and none cares to deny the present and pressing duty except the enemy; but there remains much that is not plain and is not admitted by all.

Is the lot of the common man all that it should be?

True, after every great war there is social unrest, the feeling that all is not well, that injustice is rampant, that the real workers and saviors of society do not receive their

due reward. While much of this at the present time is factitious and without foundation in reason and fact—is it all unfounded? Are we not ourselves blind to many things—sometimes perhaps wilfully blind to unpleasant truths, but for the most part blind because we do not think? More evil is wrought by want of thought than by want of heart—we must take thought. The best way to avoid the spread of mischievous doctrines, doctrines antagonistic to our civilization, is to sterilize the soil against the seeds by making the classes likely to be affected by them happy in their lot—even if that means a little more than justice.

The tremendous question of disease presses more and more—public health is just beginning to take its proper place in the thoughts of the peoples and their governments—diseases long believed to be inevitable and incurable afflict an alarming percentage of the population and only the merest initial steps have been taken to combat or to cure them. Here as elsewhere an ounce of prevention is worth a pound of cure—and knowledge is the most potent of all weapons.

The enormous waste of the war has taught us we must conserve our resources and the greatest and most valuable of our resources is our men, our women, our children. What are we doing to conserve them?

The world is to be made better, brighter, happier—the hope of a blessed future after death will never die. It must be the task of the English-speaking race to bring that about.

France, gallant, heroic France, must for generations watch the Rhine; two assaults she has experienced, a third might be fatal. Italy, worthy child of old Rome, relieved indeed of the spectre of evil omen scowling over the Alps, is cribbed, cabined and confined by the necessity to overcome at home the effects of impoverishment for ages past. Germany if she would could not for generations do more than repair her shattered industrial and commercial life—and who would trust her in any case? The lesser folk

have their own problems—who will come to the help of the Lord against the mighty?

May the United States increase in wealth and prosper in every way—the more she does the more will the rest of the English-speaking world rejoice.

"Sail on, O Union, strong and great:
Humanity, with all its fears,
With all the hopes of future years
Is hanging breathless on thy fate.
Our hearts, our hopes, are all with thee;
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears
Are all with thee—are all with thee."

It is to that blessed union that I have often applied these words of the New England poet, words which he used of the United States, but of which I enlarge the application to the greater Union.

COST-FINDING IN LABOR

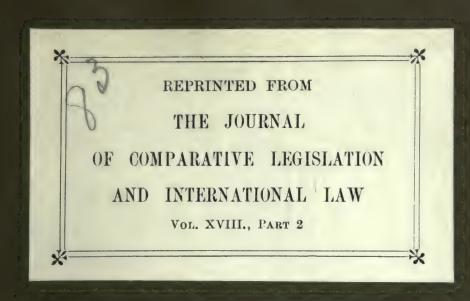
By PERLEY MORSE

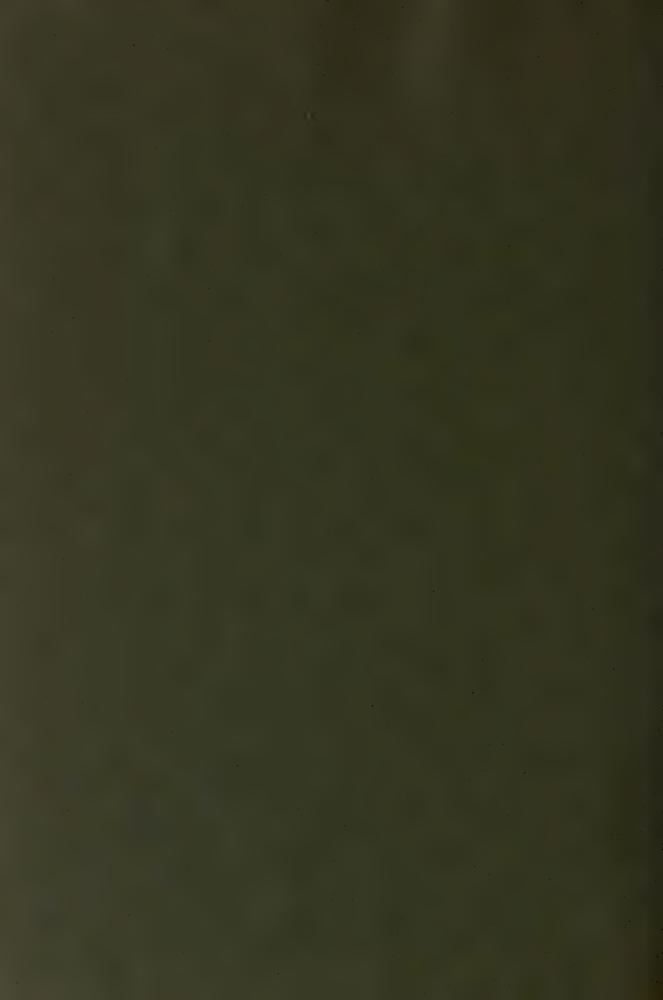
NE of the most important problems of the day in this country—even greater than those of the League of Nations, Tariff, etc.—is the problem of devising ways and means where we can all live together in peace and harmony and with a degree of comfort. This can be accomplished only through due consideration of the rights and problems of all classes of our citizens—the General Public, Labor and Capital.

The General Public, Labor and Capital should give due consideration to the problem of one another. None of these groups can act independently without injuring the others as well as themselves. One group striking injures itself and the others. Hence the common necessity of arriving at some plan for an equal working basis.

At the present time the controversy between the mine workers and the mine operators has afforded us a very good illustration. The mine workers demanded more wages. The mine operators say that they cannot afford to pay more wages unless they raise the price of coal to the public who think they are paying enough now. The mine workers say that the mine operators can pay more wages out of their enormous profits and that there is no necessity for raising the price of coal to the public. After a great deal of contention on all sides, no one seems to know the truth or the merits of the controversy; nor has any one suggested how it could be ascertained.

There is no doubt, from an economic standpoint, that the worker is entitled to a decent living wage and that the capitalist or owner is entitled to a fair return on his capital and for his services. Further, there is no doubt but that





WOMEN AS PRACTITIONERS OF LAW.

[Contributed by WILLIAM RENWICK RIDDELL, LL.D., F.R.S. Can., Justice of the Supreme Court of Ontario.]

A LITTLE more than a quarter of a century ago a flutter of what in a less dignified body would have been called excitement went through the Convocation Room at Osgoode Hall, Toronto, at a meeting of the Benchers of the Law Society of Upper Canada—a woman had applied to be admitted on the books of the Law Society, a thing without precedent in the century of the Society's existence.

From 1797, the legal profession in this Province has been master in its own house: in that year the Provincial Legislature of Upper Canada passed an Act 1 which authorised all the persons then admitted to practice and practising at the Bar to form themselves into a Society, the "Law Society of Upper Canada," which Society was to prescribe rules and regulations for students and call to the Bar, and generally to have control over the profession. Since the organisation of that Society, no one has been or could be allowed to act as barrister in any of our Courts unless and until he was called to the Bar by the Society."

While there has since 1797 been a distinction between the barrister and the attorney (or solicitor),3 there has never been any

^{1 (1797) 37} Geo. III. c. 13 (U.C.)

² Those interested will find a full historical account of the Law Society of Upper Canada in my work published by the Law Society of Upper Canada in 1916, The Legal Profession in Upper Canada in its Early Periods.

The Law Society of Upper Canada was incorporated in 1822 by the Provincial Act 2 Geo. IV. c. 5 (U.C.); but its function to call to the Bar was not interfered with.

We had (after 1794) only Common Law Courts for a time and consequently our practitioners in "the lower branch of the profession" were then attorneys (or to use the time-honoured orthography "attornies"); but in 1837, the Provincial Act, 7 Geo. IV. c. 2 (U.C.) instituted a Court of Chancery; and thereafter, till the coming into force of the Judicature Act in 1881, a member of this branch was an "Attorney-at-Law and Solicitor-in-Chancery." The Judicature Act of 1881 abolished the name attorney, and now these are all solicitors.

objection to the same person filling both positions; and from the beginning most barristers were also attorneys and vice versa.¹ While the Law Society does not admit the solicitor (to use the present nomenclature), the duty was cast upon it by the Act of 1857² to examine and inquire touching the fitness and capacity of an applicant to act as an attorney or solicitor: and ever since, the Law Society examines the candidate and gives a "Certificate of Fitness," on the presentation of which the Court admits him. Without such a certificate the Court cannot admit any one, just as without a call to the Bar by the Law Society the Court cannot hear any counsel. It is necessary before he can obtain a certificate of fitness or be called that the applicant for admission as a solicitor or for call to the Bar must have been on the books of the Society for five years (in the case of a graduate of a British University, for three years).

At the time the disturbing application was made (as now) the Governing Body, the Benchers (who were in fact the real corporation) were mainly elected by the barristers of the Province—a few Benchers ex efficio being the exception. An election is held every five years, so that the Benchers fairly well represent the sentiment of the profession at large, perhaps the more conservative sentiment.

It was to this body met in Convocation that the petition of Miss Clara Brett Martin to be admitted on their roll was presented. There was immediate opposition; true the applicant was a modest, self-respecting young woman, well-born, well-bred, and well-educated—but she was a woman.

Ontario.—After a little discussion, on June 30, 1891, Convocation decided that they had no power to admit a woman upon their books.³ Thereupon the Legislature of Ontario at the instance of Sir Oliver Mowat, the Prime Minister,⁴ passed an Act⁵ in the

¹ From a recent examination which I have made of the Rolls I find that of the practitioners of law in Ontario, all but 4 per cent. are barristers, and all but 2½ per cent. solicitors.

^{2 20} Vic. c. 63 (Can.).

³ The same decision was come to by the Bar of Montreal a few months ago; and the Courts declined to interfere.

⁴ Sir Oliver Mowat, although through all his long and useful life he called himself a Reformer or a Liberal, was quite generally by both political friend and foe (he had none but political foes) believed to be and not infrequently called a Tory or Conservative of the most Conservative type. In the matter now under discussion he was a Radical.

⁵ (1892) 55 Vic. c. 32 (Ont.).

following terms: "The Law Society may in its discretion make rules providing for the admission of women to practise as solicitors."

Convocation by a bare majority ¹ directed the Legal Education Committee to frame regulations, and on their report being adopted a rule was passed December 27, 1872, to become effective at Hilary Term of the following year.

Miss Martin was duly articled—the regulations for the admission of women as solicitors did not differ from those prescribed for men. She was not satisfied with the lower branch of the profession; but there was no statute permitting her to be called to the Bar.

In 1895, the Ontario Legislature (again at the instance of Sir Oliver Mowat) passed the Act which amended the previous Act by giving the Law Society discretion to call women to the Bar. In the following May, Miss Martin wrote to Convocation, expressing her desire to be called to the Bar; and after a good deal of discussion a rule was passed substantially the same as that for men under which she was called to the Bar, February 2, 1897: she was admitted as a solicitor on the same day.

Since that time there have been seven other women admitted as solicitors and called to the Bar—of the eight, the

The mover was Sir Oliver Mowat (who was a Bencher ex officio as being Attorney-General of the Province), the Seconder Hon. S. H. Blake (who was a Bencher ex officio as being an ex Vice-Chancellor): the vote was 12 to 11 and would have been a tie, had it not been that one Bencher was on his feet in Court and did not reach Convocation Room until the vote was just being taken. His objection was that the Province cast upon the Benchers of the Law Society the duty of deciding in their discretion what should have been decided by the Legislature as a matter of public policy. Most if not all of those who voted "Nay" were opposed to the principle of admitting women altogether. The Minute Books of the Law Society for 1892, Pp. 544, 550, and 551, contain the proceedings of Convocation.

^{3 58} Vic. c. 27 (Ont.).

³ In Easter Term, May 18, 1896, her application was received; June 5, a motion to direct the Legal Education Committee to frame regulations was voted down by a vote of 9 to 6; June 30, Charles Moss, C.C. (afterwards Sir Charles Moss, Chief Justice of Ontario), gave notice (for Sir Oliver Mowat) that he would renew the motion on the first day of the following Term. In Trinity Term, September 14, the motion passed by a vote of 8 to 4; September 25, the regulations were reported and a Rule framed and read. In Michaelmas Term, November 17, a motion to rescind the Resolution of September 14 was lost, and the following day the Rule received its second and third reading and was passed.

Minute Book, No. 5, pp. 19, 738, 768, 775. Minute Book, No. 6, pp. 10, 13, 26.

pioneer and five others practise their profession (one in another Province).1

It would appear that the number will somewhat increase in the immediate future. There are now four women students in the Law School in the third year, five in the second year, and eleven in the first year, while there are seven matriculants waiting for their time to come to the Law School, four entitled to attend in 1918 and three in 1919; of those in the second and third years in the Law School two have obtained honours and two honours and scholarships; eleven in the Law School have a degree in Arts, ten B.A.'s and one M.A.2

1 I give the list as furnished me by the Secretary of the Law Society—it will be noticed that three have married barristers:

LIST OF WOMEN LAWYERS.

Name.	Address. W	Vhen Called	l. Remarks.
r. Clara Brett Martin	Toronto	H. 1897	Practising.
2. Eva Maude Powley	Port Arthur	E. 1902	Practising.
3. Geraldine Bertram Robinson.	Toronto	T. 1907	Married E. W. Wright,
			Barrister of Toronto;
		-	pays Bar fee.
4. Grace Ellen Hewson	Toronto	E. 1908	Married, not practising.
5. Jean Cairns	Huntsville	T. 1913	Married P. R. Morris,
			Barrister of Hamilton,
			practising at Hamilton,
			Ontario, with her hus-
			band.
6. Edith Louise Paterson (a) .	Vancouver	E. 1915	Practising in Vancouver,
			B.C.
7. Mary Elizabeth Buckley (b) .	Toronto	E. 1915	Married H. V. Laughton,
*			Barrister of Toronto,
			practises a little.
8. Gertrude Alford	Belleville	15 June,	Practising in Trenton,
		1916	Ontario.
(a) Obtained honours and Scholarships.			

(b) Obtained honours.

2 As has been said, the Rules of the Law Society require every applicant for Call or Admission to have been five years on the Books of the Society (three years in case of a Graduate of a British University); the last three years, he must attend the Law School at Osgoode Hall (which is entirely supported, controlled, and managed by the Law Society).

The following are the Rules respecting women:

Rules for the Admission of Women to Practise as Solicitors and Barristers-at-Law. 178. (1) Any woman who is a graduate in the Faculty of Arts in any university in His Majesty's Dominions empowered to grant such degrees, and any woman being competent as a student within the requirements of Rules 103 or 104, shall upon compliance with the following Rules, be entitled to admission to practise as a solicitor pursuant to the provisions of The Law Society Act, s. 43 (2), provided that:

(a) She has been entered upon the books of the Society in the same manner and

Scarcely half of I per cent. of the practitioners in Ontario are women; the profession of law makes by no means the same appeal to them as medicine.

Women as Practitioners.—The women who practise law are not "wild women"; they are earnest, well-educated women who ask

upon the same conditions as to giving notice, payment of fees, and otherwise, as are provided for admission of Students-at-Law of the graduate and matriculant class respectively;

(b) She has been bound by contract in writing to serve as a clerk to a practising solicitor for a period of three or five years from the date of her entry upon the books of the society, according as she shall have been entered on the books as a graduate or matriculant:

(c) She has actually served under such contract for such period of three or five years, as the case may be;

(d) She has complied with the conditions of the statutes and the Rules of the Society with regard to execution and filling of such contract, and any assignment thereof, and with every other requirement of the Society with regard to Students-at-Law, including attendance upon lectures in the Law School, passing of examinations, payment of fees, and every other matter or thing compliance with which by a Student-at-Law is a prerequisite to admission to practise as a solicitor.

(2) The fees payable by such woman upon receiving a Certificate of Fitness to practise shall be the same as those payable by other Students-at-Law.

(3) Upon admission to practise, such woman shall become subject to all the provisions of the statutes and the Rules of the Society with regard to solicitors, and non-compliance with or failure to observe the same or any of them shall subject her to all the disabilities and penalties imposed upon other solicitors.

179. Every woman seeking admission to practise as a Barrister-at-Law under the provisions of the Statute in that behalf shall furnish proof that:

(a) She has been entered upon the books of the Society pursuant to the Rules for admission of women to practise as solicitors, and has remained on such books for a period of three or five years, according as she shall have been entered as a graduate or matriculant.

(b) She has actually and bona fide attended in a barrister's chambers, or has served under Articles of Clerkship for a period of three or five years as the case may be.

(c) She has complied with the conditions of the statutes and every requirement of the Rules of the Society with regard to Students-at-Law, including attendance at lectures in the Law School, passing of examinations, payment of fees, and every other matter or thing compliance with which by a Student-at-Law is prerequisite to Call to the Bar.

180. The fees payable by such woman upon admission to practise as a barristerat-law shall be the same as those payable by other Students-at-Law.

181. (1) Upon admission to practise as a barrister-at-law such woman shall become subject to all the provisions of the statutes and the Rules of the Society with regard to barristers-at-law, and non-compliance with or failure to observe the same, or any of them, shall subject her to all the disabilities and penalties imposed upon other barristers-at-law.

(2) Every such woman appearing before Convocation upon the occasion of her being admitted to practise as aforesaid, shall appear in a barrister's gown worn over a black dress, white necktie, with head uncovered.

no favours but are quite willing to do their share of the world's work on the same conditions as men.

While occasionally one of them has been known to take the brief at a trial, this is not usual; they generally retain counsel for such work and confine themselves to chamber practice. Occasionally a woman takes a Court or chamber motion, but as a general rule her work is that of a solicitor. In my own experience, as in that of judicial brethren whom I have consulted, when she appears in Court or chambers, she conducts her case with dignity and propriety, exhibiting as much legal acumen, knowledge of the law, and sound sense as her masculine contrère, and she does not trade upon her sex.

The admission of women to the practice of law has had in Ontario no effect upon the Bar or the Courts; the public and all concerned regard it with indifference; while no one would think of going back to the times of exclusion, no one would make it a matter of more than passing comment that a woman lawyer was engaged in the conduct of legal business. It has prevented any feeling of injustice, sex oppression, or sex partiality—it has made the career open to the talents. Otherwise it has no conspicuous merits and no faults. So far as I can find out, there has never been a charge of dishonesty or unprofessional conduct made against a woman practitioner of law in Ontario (or indeed elsewhere); it is certain that no such charge has ever been brought before the Courts.

Admission in the Other Canadian Provinces.—Of the nine Provinces of Canada, Quebec refuses women the right to practise law: while the question has not arisen in Prince Edward Island, presumably the decision would be that they are excluded, as there is no special legislation. Of the other Provinces, Alberta admits them under general legislation; British Columbia under a special Act, which provides that "women shall be admitted to the study of law and shall be called and admitted as barristers and solicitors upon the same terms as men." Manitoba has also a special statute, which amends the Law Society Act by providing that "the expression persons includes females." New Brunswick in 1906 passed an

¹ A proposal to grant the right to women has been defeated for two successive years in the Quebec Legislature: a Bill for that purpose has been introduced during the present month (December 1917).

^{2 (1912) 2} Geo. V. c. 18.

^{3 (1912), 2} Geo. V. c. 32, 8. 2.

Act in the same terms as the British Columbia Statute above mentioned, and Nova Scotia in 1917 passed a similar Act expressly stating that it was declaratory of the existing law. Ontario we have seen calls and admits under two Statutes—now combined in Revised Statutes. Saskatchewan has a special Statute, the Statute Law Amendment Act 1912–13, which by s. 27 provides: The Benchers may in their discretion make rules for the admission of women to practise as barristers and solicitors."

The question as to the admission of women to the Bar has not yet come up in the Yukon Territory.

The whole number of women practising law in Canada is very small, perhaps a dozen in all—e.g. Alberta has called only one and she got married, Saskatchewan only two; the numbers may be expected to increase, but not rapidly. I do not think that the most fervent advocate of women's rights could claim that the admission of women to the practice of law has had any appreciable effect on the Bar, the practice of law, the Bench, or the people. It is claimed that it was a measure of justice and fair play, that it removed a grievance and has had no countervailing disadvantage. That claim may fairly be allowed: in other respects, the admission of women is regarded with complete indifference by all but those immediately concerned.

United States.—In the United States women have joined the profession in somewhat larger numbers than in Canada—there are now about 1,200.

They are admitted to practise before all the Federal Courts of the United States and all the State Courts except those of Arkansas, South Carolina, and Virginia. Generally they are admitted under general legislation, but in some instances special legislation has been passed—sometimes by reason of adverse decisions of the State Courts, occasionally (it may be) ex abundanti cautelâ.

As in Canada, no one in the United States would now think of

^{1 6} Ed. VII. c. 5.

^{2 7 &}amp; 8 Geo. V. c. 41.

^{3 (1914),} c. 157, c. 1-3 (2).

^{4 3} Geo. V. c. 46.

⁵ Probably it would be held that they would not be admitted. See Consolidated Ordinances of Yukon Territory, cap. 50: "The Legal Profession Ordinance."

In the United States the entry of women into the sacred circle was not always easy: the Courts were in some instances adverse, adhering to the beloved "Common

excluding women when once they were admitted. It cannot, I think, be fairly said that their admission has had any marked effect upon the Bar or the practice of law; their influence on legislation for the protection of women and children is considerable, but not more than that of an equal number of women who have not joined the profession—what influence there is has been, I think, uniformly

Law of England." Where that was the case, the Legislature was attacked with the result stated in the text. I add here a partial account of the course of the campaign.

Mrs. Myra Bradwell was the first woman to meet a rebuff in the State Courts, so far as I have seen in the Reports: she in 1869 applied to the Supreme Court of Illinois for a licence to practise law, but failed. The Court thought itself bound by the Common Law of England to refuse the application unless "the Legislature shall choose to remove the existing barriers and authorise us to issue licences equally to men and women." In re Myra Bradwell, (1869) 55 Ill. 535. The Supreme Court of the United States refused to interfere, (1872) 16 Wall. 130. No long time elapsed before such authority was given. On March 22, 1872, an Act was approved "to secure to all persons freedom in the selection of an occupation profession or employment" which by s. I enacted "that no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex" (see Hurd's Rev. Stat. 1915–16, cap. 48, par. 2). In 1874, a further Act was passed "to revise the law in relation to attorneys and counsellors"; and that by s. I provided "No person shall be refused a licence under this Act on account of sex" (Hurd, the supra, cap. 13, par. 1).

One of the Federal Courts was equally hostile. Mrs. Belva A. Lockwood in 1873 applied to be admitted as attorney and counsellor-at-law of the Court of Claims at Washington, a Federal Court of the United States. The Court held that the responsibilities of such a position were inconsistent with the holding of an office by a woman, and "a woman is without legal capacity to take the office of Attorney." In re Mrs. Belva A. Lockwood, exp. 9 Ct. of Cl. (Nott & Hop.) 346: sustained in the Supreme Court, 154 U.S. 116. Shortly afterwards the Supreme Court of the United States (October Term, 1876) refused to admit Mrs. Lockwood to practise in that Court "in accordance with immemorial usage in England and the law and practice in all the States until within a recent period." (See 131 Mass. Rep. at

p. 383.)

Very shortly thereafter Congress acted: the Act of Congress, February 15, 1879, chap. 81 (20 Stat. L. 292) provides "Any woman who shall have been a member of the bar of the highest Court of any State or Territory or of the Supreme Court of the District of Columbia for the space of three years and shall have maintained a good standing before such Court and who shall be a person of good moral character shall on motion and the production of such record be admitted to practise before the Supreme Court of the United States." Under that statute, Mrs. Lockwood was admitted to practise in the Supreme Court. She was also admitted to practise in the Supreme Court of the District of Columbia and in certain of the State Courts, but her application was rejected in Virginia. The Supreme Court of the United States gave her no relief, (1893), 154 U.S. 116—and Virginia is still joined to its idols.

Miss R. Lavinia Goodell was no more successful in the Wisconsin Court in 1875; the Chief Justice, Ryan, thought that "reverence for all womanhood would suffer in the public spectacle of woman so engaged"; and in the absence of a statute her application was refused. In re Goodell, (1875), 39 Wis. 232.

Massachusetts then spoke to the same effect. Miss Lelia J. Robinson was

good. They have sustained a good reputation in their practice: no charge of impropriety, dishonesty, or unprofessional conduct has ever been laid against them so far as the Court records show.

Their Position as Lawyers.—The remainder of the Bar were slow to accept woman as a lawyer; where she has made her appearance, the Bar seems to have gone through the stages of amused curiosity

refused admission as an attorney and counsellor of the Supreme Court—she was not a "citizen" or a "person," and without "clear affirmative words in a Statute" the Court's hands were tied. Re Lelia J. Robinson, (1881) 131 Mass. 376.

The "clear affirmative words" soon came: on April 10, 1882, a statute was approved, c. 139, "The provisions of law relating to the qualification and admission to practise as attorneys-at-law shall apply to women." A similar decision in Oregon, In re Leonard, (1885), 12 Oregon 93, refusing admission to Mary A. Leonard led to the passing in 1885 of the statute, "Hereafter women shall be entitled to practise law as attorneys in the Courts of this State upon the same terms and conditions as men." See Lord's Oregon Law, s. 1079.

Tennessee in 1893 refused admission as a Notary Public to Miss F. M. Davidson in a decision which was considered to indicate that a woman could not be an attorney—the Act of 1907, chap. 69, made the law clear—"Any woman of the age of twenty-one years and otherwise possessing the necessary qualification may be granted a licence to practise law in the Courts of this State." (See Thompson's Shannon's Code of 1917, s. 5779, a, 6.)

Some other like decisions in the State Courts led to special legislation; but in most States, the Courts interpreting general legislation took a different view. The first admission was in a State in the middle West. Iowa in 1869 admitted Mrs. A. A. Mansfield under a statute providing that "any white male person" may be admitted because the affirmative declaration did not by implication deny the right to women. Missouri came next—the Court admitted Miss Barkalow; Maine admitted Mrs. C. H. Nash in 1872. To make the matter absolutely clear, chap. 98 of the Public Laws of 1899 enacts "No person shall be denied admission or licence to practise as an attorney-at-law on account of sex." In the Federal Court, District of Columbia, Miss Charlotte E. Ray was admitted about 1873; and in 1874 Miss Hewlett was admitted by the Federal District Court (Illinois); and the Federal District Court (Iowa) also admitted a woman. See 39 Wis. at pp. 238, 239.

In New Hampshire, in 1890 the petition of Mrs. Marilla M. Ricker, a widow, to be admitted to practise law was granted, the well-known Chief Justice Doe writing an elaborate opinion with a wealth of learning more or less applicable. He came to the conclusion that a woman was a "citizen" and a "person"; and an attorney not taking an official part in the government of the State (for which women are disqualified by the Common Law) there was no reason why a woman could not be an attorney. In re Rikver's Petition, (1890), 66 N.H. 207.

Colorado took the same view in 1891 when Mrs. Mary S. Thomas was admitted to the practice of law; she was a "person" and an attorney did not occupy any "civil office." In re Thomas, (1891), 27 Pac. Rep. 707; 16 Colo. 441.

Indiana held the same way in 1893—In re Petition of Leach exp., (1893), 134 Ind. 665.

The Connecticut Court of Errors in re Mary Hall, (1882), 50 Conn. 131, had gone back to the legislation of 1750 in the attempt to interpret the more recent legislation, and holding that Mary Hall was a "person" admitted her to practise—one learned Judge differing from his three brethren.

turning to real and well-grounded respect. No doubt the conservative part of the profession will always look upon the woman lawyer as unladylike, unwomanly, recreant to her natural position, overturning the laws of God, what not? That is inevitable: but the great body of the profession is beginning-has indeed progressed some distance on the way-to treat her as a desirable and useful part of the profession and the body politic. "The Courts have invariably treated women practising before them with the greatest courtesy and kindness." 1 On inquiry, I find that the Bench can discover no difference in the ability and acumen in man and woman; it is the individual talent and industry which tell, not the sex. While there are exceptions, the rule is that women do not take trial briefs; as in Ontario, they mainly confine themselves to chamber practice. The number of woman lawyers is increasing slowly if at all, and there seems to be no more fear of man losing his lead in law than in the sister profession of medicine-indeed the competition is not so great as in medicine.

If I were to sum up in a sentence the results of the admission of women to the practice of law from my experience and inquiry, I would say that it has done some good, and no harm, while all prophecies of ill results have been falsified; that its effects on the profession and practice of law have been negligible, and that it is now regarded with indifference and as the normal and natural thing by Bench, Bar, and the community at large.

I quote from a letter from Mrs. Mussey, President of the Women's Bar Association of the District of Columbia, to whose kindness I owe some of the facts in the text. The position of women in the District of Columbia is peculiar in that they are admitted to the Bar of the District, but not to the Bar Association and therefore not to the American Bar Association. A prominent member of the Bar Association somewhat maliciously says that this "will suggest a distinction which still exists in the minds of men lawyers." However, the women have their own apparently prosperous Bar Association in the District of Columbia

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ASK FOR SPECIAL STUDENT'S DISCOUNT

The Value of an Arts Course to the Lawyer.

BY

THE HONORABLE MR. JUSTICE RIDDELL, B.A., B.SC., LL.B.

In considering this question there are two matters which must ever be kept in mind. The first is, that a lawyer practises his profession for a livelihood—to make a living—to make money. It is often cast up to lawyers apparently as a reproach, that they do practise for money. Of course they do, but I have yet to learn of any profession or trade or business of which the same is not true.



CHIEF JUSTICE RIDDELL.

If the salary should stop, Colleges would cease; and not many physicians and surgeons give their skill wholly without remuneration. In my humble view, it is the duty as well as the right of every man to make as much money as he honestly can without detriment to what is more valuable than money. The outery against making money generally comes from those who have not made any and are sorry for it, and in the vastly greater number of cases is sheer hypocrisy. "Radix enim omnium malorum est cupidatas"—non pecunia.

And the more accurate, better informed a lawyer is, the more likely he is to make a success of his profession.

But there is the second matter—the lawyer is not all lawyer—ntmo potest exuere hominem, and man does not live by bread alone—there is more in life than money and meat.

In the successful practise of law accuracy is at a high premium—accuracy of information, accuracy of thought, accuracy Anything which tends to accuracy is to be deof expression. sired. In mathematics a mistake in a sign or an exponent will render useless a long calculation or series of calculations; in chemistry a wrong reagent or a reagent in the wrong quantity may ruin an experiment or an investigation; in blowpipe analysis a mistake in identifying a color is fatal. All these lead to accuracy of observation, of manipulaton, of thought. But accuracy is as much desiderated in, say, Greek prose—the proper use of où and μή, of the agrist, imperfect, and perfect, and the application of the rules for conditional sentences are as fixed as the most acute and logical people that ever lived could make them. In Latin, the like is true, perhaps to a less extent, but to my mind the rules are more difficult. Indeed, I have never been able to understand why Greek is commonly supposed to be more difficult than Latin. Either language is a training school for accuracy.

There should be at every lawyer's disposal a large fund of information,—information of every kind. (I have even found occasion to make use of Hebrew—only once, however.) The most valuable information is derived from a study of the natural sciences. Modern life is so complex, so many machines are at work, there are so many new inventions and discoveries undreamed of by those we fondly call the "Sages of the law," that the lawyer cannot now—if he ever could—be a mere literary man. Information of this kind comes not from pure mathematics, the classics, astro-physics, but from physics, chemistry, applied mathematics, biology especially, bacteriology and the like. It were much to be desired that the modern languages, at least French and German (Italian and Spanish are more ornamental than useful) should be taken in connection with these, but it would seem that there are practical difficulties in the way.

But, more important than the information, is training in the right way to acquire information—for the lawyer information must be acquired rapidly as well as accurately. It may seem a paradox, but it is a fact that the speediest worker is generally the most exact. "Wisely and slow; they stumble that run fast," was written by the same pen as wrote "To be slow in words is a woman's only virtue." The poet who says:

> Έπισχές οὖτοι τὸ ταχὺ τὴν δίκην ἔχει, Βραδεῖς δὲ μῦθοι πλεῖστον ἀνύτουσιν σοφόν.

puts the words in the mouth of an old woman; and she speaks pro rê natâ. Now I do not mean the man who scamps his work. and does not get it up at all, but the faithful worker who really masters his brief. And the reason is not far to seek. The most rapid worker is he who masters his facts as he goes along, and does not require to turn back once and again to gather up the missing threads. In this direction, I do not know of anything more valuable than the languages, ancient and modern, if properly taught, nor of any so harmful as these languages as they were once—perhaps now are—taught. Let me cite the Greek Grammar of my boyhood—Bullion's Greek Grammar, the second edition. Speaking of translation, the author says, "The sentence to be translated is analyzed . . . It is obvious that in translating a sentence it is necessary first to analyze it. if a compound one, into the simple sentences of which it is composed, and then to translate them in their order. In proceeding with . . . simple sentences, the first thing necessary is to find the grammatical subject and predicate, i.e., the nominative and verb; on these, all the other parts of the sentence depend. Except in the Oratio Obliqua, the subject, or nominative, will commonly be a noun or pronoun, in the nominative case, near the beginning of the sentence, and the predicate will generally be the verb in the indicative mood (or the imperative), agreeing with the nominative in number and person, in any tense except the pluperfect, which is almost always found in a subordinate clause. Having found the verb and its nominative, begin with the latter, and combine with it all its adjuncts, i.e., all words agreeing with it, governed by it, or depending upon it in any way, so as to make up the complete logical subject, and then, second, take the verb, and in like manner connect with

it all words governed by it, depending upon it, or modifying it by circumstances of time, place, manner, etc., so as to make up the complete logical predicate, and in this manner proceed with every simple sentence till the whole is completed.''

Can anything be more vicious? When you are going to read a Greek author, you set to work to analyze, losing thereby not only the significance of the order of the words, but also much, if not all, the beauty of the expression. If (as no doubt this and all other languages are now taught) the student is expected to understand the meaning and probable significance of each word as he comes to it in a sentence, he then does precisely what the practising barrister does with his brief—he reads it, understands the facts as he goes along, though not their full significance fill he comes to the end, and then he should have a full understanding of his case, as the student has of his sentence.

Then it is not enough to know; it is also necessary to be able to express one's thoughts clearly, if not eloquently. The power of eloquence is not gone; but true it is that mere windy oratory, "full of sound and fury, signifying nothing," has had its day. I am sure I could tell of cases actually lost, and of more, the success of which was imperilled by reliance upon the arts of oratory. Juries have got over the taste for wind, and need something more substantial, while it is in only the exceptional case that a judge cares a straw about the modulations of a counsel's voice. There was an English judge who liked to be addressed like a jury; but his taste was exceptional. Real eloquence, however—the art of saying something in a pleasing and attractive way—is as valuable an ally as ever. But there must be something to say, something to hear which is worth saying and hearing, not simply froth and babble.

More important is the art of rhetoric, the use of the right word in the right place, the careful discrimination in the use of words nearly synonymous, the careful use of that most valuable mediums of thought—the English language.

The Greek language, it is said, is the most perfect of all languages. So it is, for Greeks and Grecians. But the lawyer must use a language understood by the people, and our noble language is a matchless weapon when rightly used. The capacity to express clear thought in terse and pure English is one of the

most valuable pieces of armor in the lawyer's magazine. Clear thought is seldom found apart from clear expression. Lord Kelvin said that he then only had a clear conception of a supposed fact in physics when he could make a mechanical model to represent it. Seldom, if ever, has anyone a clear thought without having at the same time at his command language to express it clearly. There may be better means of training in exact terminology than translation into English from other languages, and the reverse. If so, I am not acquainted with such means.

Then as to the rest of the lawyer's life, that which he has in common with his fellow-men, the intellectual life is the only life worth living. Law is a liberal and learned profession, and not a trade. I do not and cannot think that it is necessary for me to say one word as to the value of an Arts course in this point of view. Anyone who cannot appreciate this without my telling him must have ears deaf to anything I can say.

I have known many graduates and many non-graduates who practised law. I have never known of one graduate who regretted that he had taken an Arts course, or of one non-graduate who did not regret that he had not.

Res ipsa loquitur.

WILLIAM RENWICK RIDDELL.



A Novel Venture.

м. ц. н., '10.

I.

'M SICK and tired of everything and everybody, and I do wish something truly thrilling would happen!"

The speaker, who looked the picture of petulent despondency, was hardly the type from which one would expect to hear such a statement. Instead of being face to face with a pale, tired shop-girl, whose life was one dreary round of goods-selling and cash-taking, with a miserable little attic room as the daily end of it all, we are confronted by a girl scarcely out of her teens, with everything that heart could wish or an indulgent father buy. She sat in a low chair in the "den" of her father's palatial home, her chin resting on her hands, with the glow from the open grate touching her purely-chiseled profile.

The remark was addressed to the other occupant of the room, a long, lanky figure, who would have been lost in the shadow of the room and the depths of a lounging-chair had not his pedal extremities been placed upon a table a yard away. He was the personification of indolent ease.

"What is the trouble now?" he queried lazily. "Is the social whirl' proving its inadequacy thus early in life? I thought you 'just loved,' and 'simply adored,' and 'were quite crazy over' parties, receptions, fêtes, etc. And, O, yes! Those abominable affairs where a fellow squeezes through a crowd of pink silk and blue muslin in order to stand on one foot in a corner and murmur sweet nothings to some dainty damsel; or else he has a corpulent dowager spill coffee down his best white shirt-front! Pink teas, I think you call them. Lovely things!"

"Now, that's too bad, Tom Warrington," expostulated his sister, laughingly. "Stop waxing sarcastic, and tell me something quite new to do. I admit that I am tired of it all; that I am overcome with ennui, and that society bores me to the verge of distraction."

"Will you do what I suggest, Grace?" asked her brother, suddenly sitting bolt upright and displaying more alacrity than his former posture would have indicated was possible.

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SIR KENELM DIGBY'S THEORY OF LIGHT*

By WILLIAM RENWICK RIDDELL, B.Sc., LL.D., Etc., Justice of the Supreme Court of Ontario.

SIR KENELM DIGBY, born 1603, was one of the best known and most admired philosophers of his own day and those immediately succeeding. He is quoted approvingly by many writers during the 17th and 18th centuries, but is now more than a name only from his amazing "power of sympathy." The disrepute into which this curious medicament fell brought ridicule upon its advocate and has had a disastrous effect upon his reputation—a disaster almost wholly undeserved.

He was an acute philosopher as philosophy was then understood, well read in the Greek writers, particularly Aristotle, and in Bacon, Descartes, Galileo, Gilbert and Harvey. He was an accurate observer of the phenomena of nature, but hardly a

success in his experiments.

Educated at Oxford, which he left without a degree, he spent some time in France and Italy, and was subsequently employed at Court. He took out letters of marque and had considerable success over the French, Spaniards, and Venetians. He was one of the most noted of English Catholics, and was Chancellor to Queen Henrietta Maria; he was banished in 1649, and for four years lived most of the time in Paris, busy with his chemical experiments. He made his peace with Cromwell and lived, from 1653 until his death in 1665, in England, a Fellow and on the Council of the Royal Society at its institution in 1663. He died in 1665 and lies buried in Christ Church, Newgate (1).

His chief philosophical work is entitled "Of Bodies and of Man's Soul"; it is composed of two parts, and first appeared in

Paris in 1644 (2).

The work was written for his son Kenelm and was intended to deal chiefly with his "main great theme, the Soul" and its immortality, the discussion of bodies, though the greater part being

really introductory and subsidiary (3).

It is in the first part that his theory of light is to be found. At this time there was still some remains of the age-old dispute as to the nature of light—the favorite theory, being that of the Pythagoreans and Platonists, that it consists of exceedingly minute but still material particles, propelled longitudinally from the surface of the body seen and striking the eye (4). Aristotle held that light was an "activity" (energeia), i.e. what Digby calls a "quality" which is analogous to the meaning of Tyndall when he calls heat a "mode of motion."

He begins his treatise with "Quantity (5) among those primary affections which occur in the perusal of a Body;" he shows that this is "Extension" expressed by a determinate number of lesser extensions of the same nature and "therefore noth-

^{*}Paper presented to the Engineering Society, November, 1920.

ing else but divisibility;" and he declares that it is impossible that

it is composed of "points of indivisibility."

With the almost universal confusion of his times he does not accurately distinguish between a body and its qualities—between number as such and extension—and the like; but his argument

is easily followed:

He proves that indivisibles cannot make quantity—or to employ our modern terminology, the parts, however small into which matter can be divided, are not indivisible—that is matter is always matter and never "a Monad having position." His proof is taken from Euclid's Elements, Book VI., Prop. 10, by which "Euclid hath demonstratively proved beyond all cavil that any line whatever may be divided into whatever number of parts—an hundred, a thousand or a million.

Digby meets and answers various objections—some wholly

metaphysical and none requiring notice here.

Then after a discussion of rarity and density (6) and the bodies possessing these qualities, for he considers them two distinct qualities (as were in his view heat and cold, wetness and dryness, etc.), he attacks the opinion of some philosophers that rarity is produced by the mixtion of "vacuity" among bodies-in our modern terminology, that the ultimate molecules of matter are of the same weight and the mass of matter in a body depends on the nearness of the molecules to each other. He quotes against this view Aristotle's dictum (on the fourth book of his Physics) that there can be no motion in vacuo, but admits that Aristotle may be speaking of a "vast inanity," and not so little ones as no body whatever can come to, but will be bigger than they." His chief argument is this—Galileo gives water 400 times heavier than air, Marinus Ghetaldus gold 19 times heavier than water, therefore gold is 7600 times heavier than air—consequently if the deprecated theory is sound "air will . . . appear to be like a net whose holes and distances are the lines and threads in the proportion of 7600 to 1; which were too great an absurdity to be admitted" (7). Why, Digby does not say.

This is a fair sample of much that passed for scientific

proof at the time.

Having now, as he thinks, quite established the innate qualities of Density and Rarity, he defines his terms, "we may with reason call those things dense wherein a man finds a sensible difficulty to part them, and those rare wherein the resistance is imperceptible."

He then proceeds to apply gravity or weight to produce the "four first bodies called elements." Gravity with density produces wetness and dryness—when gravity works more effectively than density it forces the parts of the body to "turn to the centre, so become fluid and moist," but if in "weighing rarity against gravity it happen that the rarity overcame the gravity, then the

gravity will not change the figure . . . but what figure it has from its proper natural causes the same will still remain. . . . and consequently such a body will have terms of its own and not require an ambient body to limit and circle it in, which nature we call dry." While the quality of a body which "the more easily receives its figure from another (containing it and circling it) we attribute to wetness and moisture." In a word a body which stands by itself and can maintain its form is dry, but one which cannot is wet. Dense bodies are not necessarily dry nor rare bodies wet, but "heat is a property of rare bodies and cold of dense ones." This is assumed and stated without any, even the semblance of, proof.

Digby is puzzled by the paradox that of dense bodies the less dense is the more cold, but of two rare ones the less rare is the less hot—his terminology prevents him appreciating that the two statements express the same thing differently worded.

Now he comes to grips with the elements and is convinced by what to our modern thought is an extraordinary piece of sheer empty verbiage that "the number of elements assigned by Aristotle is truly and exactly determined by him; and there can be neither more or less of them. . . the conjunction of gravity with these two (i.e. rare and dense bodies) breeds two sorts of combinations, each of which is . . , twofold the one extremely hot and moderately dry . . . another extremely humid and moderately hot . . , another extremely cold and moderately wet and another extremely dry and moderately cold. . . Fire, Air, Water and Earth" (8). These elements are again compared thus, "What makes itself and other things be seen as being accompanied by light, is called fire; what admits the illuminative action of fire and is not seen is called air; what admits the same action and is seen is called water; and what through the density of it, admits not that action, but absolutely reflects it, is called earth" (9).

He adds to the difficulty of our understanding precisely what he means—if he had any clear idea at all—by saying that though he had pitched on the four bodies of fire, air, water and earth, "it is not my intention to affirm that those which we ordinarily call so and fall daily within our use are such as I have expressed them; or that these philosophical ones . . . have their residence or consistence in great bulks in any places of the world be they never so remote—as fire in the hollow of the moon's orb, water in the bottom of the sea, air above the clouds, and earth below the mines. . . These notions are only to serve for certain ideas of elements by which the forenamed bodies and the compound of them may be tried and receive their doom of more or less pure and approaching to the nature from whence they have their determination. And yet, I will not deny that such perfect elements may be formed in some very little quantities

in mixed bodies, and the greatest abundance of them in these four known bodies that we call in ordinary practice by the names of the pure ones, for they are least compounded and approach most to the simpleness of the elements."

To use the Platonic term, "idea," enables us to translate this

into modern language thus:-

"What I have called fire, air, water and earth are not really what are generally so called; but certain matter existing only in theory (speaking generally), the terminology is employed for convenience only, and to indicate the quantity of heat and fluidity possessed by a body. There may, indeed, be certain small ingredients of a body with the ideal quantity of heat and fluidity, but such is not to be expected in great quantity anywhere."

This thought every now and then escapes Digby; but he has it generally, if only subconsciously or unconsciously, and it must not be lost sight of by anyone desiring to comprehend his

philosophy.

Comparing the elements, he finds fire more active than water or earth, "as will appear clearly if we consider, how, when fire is applied to fuel and the violence of blowing is added to its own motion, it incorporates itself with the fuel, and, in a small time converts a great part of it into its own nature and shatters the rest into smoke and ashes.

All which proceeds from the exceedingly smallness and dryness of the parts of fire, which being moved with violence against the fuel and thronging in multitudes upon it, easily pierce the porous substance of it like so many extremely sharp needles (10). Here we have a new assumption, viz., that the ultimate particles of fire are exceedingly small—nothing so far has been said to indicate that they are smaller than those of any other element, but the alleged fact continues to be tacitly assumed.

And now he attacks the problem of light. He refuses to follow Aristotle in his view that light is a "quality," denying it any bodily subsistence, although there has followed him almost

all the world ever since.'

Digby confesses that he does not know what philosophers ordinarily mean by "qualities," and he is confident "neither do they;" and a modern can sympathize with him, for these so-called philosophers made a quality a sort of entity, distinct from the body it accompanied, and yet denied it a subsistence.

The gastric juice digested the food by virtue of a quality of digestion it had; water flowed by virtue of a quality of fluidity, medicine healed by the virtue of a quality of healing, etc., etc.

Digby considers that heat is nothing, but the very substance of fire, "a continual stream of parts issuing out of the main stock of the same fire that enters into the wood and by its rarity makes its way through every little part and divides them," a conception

as alien from our own modern ideas as that of the philosophers

with whom Digby disagrees.

He boldly asserts that light is not a quality (11) and converts the arguments, five in number, of those who hold the view that it is a quality and not a substance. The first is that it illuminates the air in an instant and therefore cannot be a body, for "a body requires succession of time to move in, whereas light seems to spread itself over the whole hemisphere in an instant;" the second, that two lights can be in the same place, while no body can admit another into its place without removing therefrom; the third, that if light is a body it can be none other than fire, "the subtilest and most rarefied of all bodies whatever, and must be accompanied with heat; the fourth, the sudden extinction of fire, for "what becomes of that great expansion of light that shined all about when a cloud interposes itself between the body of the sun and the streams that come from it?" and the fifth, that if light were a body it would be shaken by the winds and by the motion of the air. As to the two first objections Digby rightly conceives them to be contained in substance in the third, because they are based upon peculiarities wherein light has a resemblance to fire, and as to the third he says that light is fire—not, indeed, fire in every form or fire joined with every substance that expresses itself by light, but fire extremely dilated and without mixture of any gross body. And as fire, so light is corporeal. He supports this statement by an extraordinary argument:

"Let me hold a piece of linen or paper close by the flame of a candle and by, little by little, remove it further and further off; and methinks my very eye tells me, that there is upon the paper some part of that which I see in the candle, and that it grows still less and less as I remove the paper further from it; so that if I would trust my sense, I should believe it as verily a body upon the paper, as in the candle, though infeebled, by

the laxity of the channel in which it flows."

Plainly he takes the light reflected from the linen or paper for a material deposit upon the linen or paper! Having persuaded himself by arguments of no greater validity than that just mentioned" "of the corporeity of this subtile thing," light, he proceeds to answer the third objection, that if light were fire it must heat as well as enlighten, by saying that "there's no dobut but it doth so as is evident by the weather glasses and other artificial musical instruments as organs and virginals which Cornelius Drebbel (that admirable master of mechanics) made to show the King, all of which depends upon the rarefaction and condensation of some suitable body conserved in a cavity within . . . the instrument (12). He thinks the ancient miracle of Memnon's statue which sang at sunrise was "a juggle of the Ethiopian priests made by the like invention." (13). Our bodies, indeed, do not

always feel the heat, for we cannot feel heat unless it be greater than that which is in our sense, and "it is very possible that an exceedingly rarified fire may cause far less impression of heat than we are able to feel."

He compares "dilated fire" with "dilated water," when a basin of water is converted into steam, the "virtue of wetting" is reduced in proportion as the basin is less than the room; and so with dilated fire. "As dilated water may be again condensed, so dilated fire may, by the aid of glasses, be condensed to as much as it is (for example) in the flame of a candle, and then that fire or compacted light will burn much more forcibly than so much flame." This very experiment of the Burning Glass Digby considers to prove conclusively that light is fire and "nothing but fire in its own nature and exceedingly dilated."

Having now, as he thought, satisfactorily answered the third objection, he proceeds to the fourth, which asks what becomes of the light when it dies by the intervention of a cloud or the like. The adversary says that he might believe light to be fire if after it went out there were "any ashes remaining, but experience assures us, that after it is extinguished it leaves not the least ves-

tige behind it of having been there."

The objection he rather evades than answers, he asks the adversary to tell "what becomes of the body of a flame which is continually dying, and being renewed by fresh fuel and leaves us no remainder behind it," and "when he hath well considered

this, he will find that one answer will serve for both."

Digby is too honest to accept support for his theory from an experiment—a nobleman of much sincerity and a "singular friend" of his told him, that by means of glasses of peculiar construction and arrangement he had seen the sunbeams gathered together and precipitated into a brownish or purplish red powder, in some days nearly two ounces. Digby believes that the substance deposited was something which came along with the sunbeams and no part of them—we would say it was a simple swindle, especially when we learn that the powder was a "magistry" or a philosophers' stone "of a strange volative nature," which could pierce into gold itself in a very short time (14). And he is justly incredulous of the perpetual lamps with incombustible lights, alleged to have been found in tombs—before he undertakes to explain that he wants to see them "undoubtedly proved"—a wise precaution which certainly relieved him from any explanation.

He now returns to the second objection, based upon what we call the impenetrability of matter, viz., that two bodies cannot occupy the same place at the same time, whereas the sunbeams enlighten all the air and the light from two or more candles is everywhere in the same room. So far as the air is concerned, the answer is easy. The air, being a light divisible body, yields without resistance as much space as is requisite for light. It is

not at all necessary that the light should be in "every point or atom of air, but to make us see it everywhere it suffices that it be in every part of the air which is as big as the black or sight of our eye (15), so that we cannot set our eye in any position where it receives no impression of light," which is pretty bad logic, but he supports it by a most ingenious argument. The motes seen in a sunbeam sent through a cranny do not admit the light within themselves, but reflect it—still, immovable as they are, they do not prevent one seeing through the air; and consequently a fortiori, those parts of the air which are not penetrated by light cannot be supposed to check our vision.

Then as to the supposed fact of two or more lights in the same place, he treats of the exceeding minuteness of the particles of light. A great mathematician not named in the text, but identified in a note as Willibrod Snell (16) had calculated that the flame from gunpowder was 125,000 greater in extension than the gunpowder, and therefore might pass 125,000 rays of light in the space of the least part of gunpowder, which would be

absolutely invisible to us on account of its minuteness.

"Wherefore seeing that one single light could not send rays enough to fill every little space of air that is capable of light.

it is obvious enough to conceive, how, in the space where

the air is, there is capacity for the rays of many candles."

Digby postpones his answer to the fifth objection, in order to deal with what he considers the most powerful objection to the corporeity of light, that is, "that its motion is performed in one instant and therefore cannot belong to what is material and clothed with quantity" (extension). He refers to the ring of light seen when children whirl round the firesticks to prove that the motion of light cannot be descried, and that indeed no argument can be made from thence to prove that light is not a body" The question is then asked why light travelling with a great velocity does not shatter all substances, including the air. The answer is that three things concur to make a percussion great, the bigness, the density, and the celerity of the body moved, and of these, light has only one, namely celerity. speaks of motes of the air which we see but cannot feel, the falling of a straw on one's head, etc., etc., and then makes an elaborate calculation to determine the density of the light of the sun.

"Then density of the light we have here on earth is to the density of that part of fire which is the sun's body, as the body of the sun is to that body, which is called Orbis Magnus (whose semidiameter is the distance between the sun and the earth) which must be in subtriple (18) proportion of the diameter of the sun

to the diameter of the great Orbe."

Galileo (19) makes this one to 106,000,000, and applying Snell's computation of the relative density of flame and gunpowder, it at once appears that a grain of light at the earth must

be 106,000,000 times rarer than the flame at the sun, and consequently 125,000 x 106,000,000 or 13,250,000,000,000 times rarer than gunpowder. This is full of absurdities; not to say anything of the very serious error in the ratio assumed, or of the relative density of gunpowder and flame (which might pass in the existing state of pneumatics) it should have been obvious even to Digby that he was assuming that the rarity of light was uniform throughout the half-sphere of the Great Orb, while his own method would prove that the nearer to the sun the less the rarity of light. On his hypothesis it was impossible that the rarity of light could be uniform, and this impossibility was the basis of his computation. Compared to this glaring absurdity, his assumption that the light came from the whole of the half-sphere of the sun, and not simply from the surface is as nothing, even if the mistake were not pardonable in the existing state of science.

It is obvious that the true ratio of the "rarity" of light (assuming Digby's other propostions) at the sun and at the earth is not the triplicate but the duplicate ratio, the ratio not of the cubes but of the squares, of the radii of the great orb and sun reducing

the ratio to about 28,000,000,000 to one (20).

Digby, having now proved that a grain of gunpowder is 13,250,000,000 times as heavy as a "ray of light as big as a grain of gunpowder," he asks "what degree of celerity light must have, more than a grain of gunpowder, to recompense the excess of weight which is in a grain of gunpowder, above that which is in a ray of light as big as a grain of gunpowder?" He indulges in an extraordinary computation to find the ratio of the semi-diameter of the orbis magnus (i.e., the distance of earth from sun) to the semi-diameter of a grain of gunpowder, and taking 60 grains of gunpowder to the inch, he finds that the semi-diameter of the orbis magnus would contain 9,132,480,000,000 grains of gunpowder (21)—or as he says, "there will be in it but 9,132,480,000,000," and adds, "whereas the other calculation makes light to be 13,250,000,000,000 times rarer than gunpowder which is almost ten times a greater proportion than the other." This has no possible meaning. I have tried to enter Digby's mind to find out what he meant to say, or what he thought he was saying, but have failed. It is impossible that he could have had any definite meaning, and this part of his book is so much idle verbiage. He affects to be determining the speed of light as compared with the "speed of gunpowder"—whatever that may be, and what he finds is the number of grains of gunpowder which would lie upon a semi-diameter of the earth's orbit. What that has to do with the relative speed no one can tell, and what is meant by saying that one ratio is "ten times greater than the other" is a mystery. The statement is untrue, and if true could have no relevancy.

However, he thinks he has proved that the extra velocity of light does not counterbalance its extreme lightness and consequently infers that "it is impossible that a ray of light should make

any sensible percussion, though it be a body" (22).

Now he turns to the last objection, viz., that light is not "fanned by the wind," as it was contended it would be if it were a body. His answer is an extraordinary bit of logomachy, and as a sample I here transcribe it:

"As for the first part, we see that, when a body is discern'd now in one place, now in another; then it appears to be moved. And this we see happens also in light; as when the sun or a candle is carried or moves, the light thereof, in the body of the candle or sun, seems to be moved along with it. And the like is in a

shining cloud or comet.

But, to apply this to our purposes: We must note, that the intention of the objection is, that the light which goes from the fire to an opacous body far distant, without interruption of its continuity, should seem to be jog'd or put out of its way by the wind that crosses it. Wherein the first failing is, that the objector conceives light to send species to our eye from the midst of its line; whereas with a little consideration he may perceive that no light is seen by us but that which is reflected from an opacous body to our eye; so that the light he means in his objection is never seen at all. Secondly, 'tis manifest that the light which strikes our eye, strikes it in a straight line, and seems to be at the end of that straight line, wherever that is; and so can never appear to be in another place; but, the light, which we see in another place, we conceive to be another light. Which makes it again evident that the light can never appear to shake, though we should suppose that light may be seen from the middle of its line; for no part of wind or air can come into any sensible place in that middle of the line with such speed, that new light from the source doth not illuminate it sooner than it can be seen by us; wherefore it will appear to us illuminated, as being in that place; and therefore the light can never appear shaken. And lastly, it is easier for the air or wind to destroy the light than to remove it out of its place, as that we should see it in another place; but if it should remove it, it would wrap it up within itself and hide it."

Digby concludes his discussion of light by saying that "fire is the most rare of the elements and very dry that it may be cut into little pieces it multiplies extremely in its source; it must of necessity follow that it sends out in great multitudes little small parts into the air and other bodies circumfused with great dilation in a spherical manner . . . these

parts are easily broken and new parts still following the former are still multiplied in straight lines from the place where they break . . . that it must in a manner fill all places, and no sensible place is so little but that fire will be found in it if the medium be capacious . . fire must of necessity do what experience teaches us that light doth. That is to say in one word, it will show us that fire is light. But if fire be light, then light must needs be fire. And so we leave this matter."

SWITCHBOARDS*

By S. E. M. HENDERSON

PROPOSE to divide this talk into two sections, the first part, consisting chiefly of a number of lantern slides, illustrating some of the engineering features, and the second part covering, in a general way, the commercial aspect of the work from the

manufacturer's standpoint.

The term "Switchboards" is applied to a piece of control equipment that shows wide variations in structure and appearance, and which is used for a wide variety of purposes. In North America this control equipment is called "Switchboards," in Europe, "Switch gear," but neither term is truly descriptive, because, in both cases, the equipment involves not merely switching but also control, protection and measurement. This means that a great many individual pieces of apparatus and material (probably 3,000 or more) are used in making up the various kinds of Switchboards, and consequently the subject is an extensive and complicated one. The lantern slides will show only a few of the more important parts.

Coming now to the second part of the talk, we will leave the physical aspects and consider some of the commercial features. Switchboards and Switchboard Apparatus, like all other material made by our Company and other Companies, are made to be sold at a profit, with a view to paying dividends on the money invested in the business. This is the primary object, but many features of more or less importance have a bearing on the final results. So far as the general principles are concerned, selling switchboards at a profit is the same as selling generators, sugar, transportation, personal services or any other tangible or Numerous books on selling and salesmanship intangible asset. are available, giving analyses of the different steps involved in making a sale, describing the psychological processes on the part of the buyer and seller and covering the entire proceedings from all angles. Therefore, it is only necessary to cover here certain

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APPENDIX.

THE GRADUATE AND THE COUNTRY.

An address delivered at the Commencement Exercises of the Ontario Veterinary College, Toronto, in Convocation Hall of the University of Toronto, April 24th, 1915, by the Honourable William Renwick Riddell, L.H.D., F.R.Hist.Soc., etc., Justice of the Supreme Court of Ontario.

I desire to begin by congratulating you on the tremendous advance made by Veterinary Surgery during the last few years-not alone on the advance of the science but also on the advance in public estimation of its practitioners. In my youth—now indeed more remote than that of most—eheu fugaces labuntur anni there was hardly such a person as the Veterinary Surgeon. Every blacksmith in the country was a horseshoer and therefore a farrier, and consequently a horse doctor ex-officio. He was "ever . . . furnished with horseshoes, nayles and drugges both for inward and outward applycation," as old Francis Markham in his "Booke of War" said three hundred years ago "an excellent Smith or Farrier" should be. There was indeed an occasional instance where some more or less unknown individual supported himself in a precarious existence by "horsedoctoring" alone, but the cases were rare. Horse doctors, smith or otherwise, all burned for the lampas (which they invariably called "lampers"), blistered for a splint and bled for pretty much everything, the fleam being always handy. Everyone of them had his own cure for bots, ranging from sweet oil and turpentine to an exclusive regimen of timothy hay and carrots. But this was not to be wondered at—the farmer was an exception who, being pressed, would not modestly admit that he had an infallible cure himself, which he would perhaps disclose; but in any case he had a pitying smile for any other treatment than his own. Almost the same remarks apply to "hollow-horn" in cattle. Very few indeed were so greatly daring and bravely iconoclastic as an old friend of mine who always said "You insure me against hollow-belly and I'll insure myself against hollow-horn."

No one exercising the trade had been scientifically educated; the practice was a very bad form of empiricism and quackery, and the worst feature of all was that no one could understand that there was or could be advantage from a knowledge of the physiology of animals or from a careful training in scientific principles. I well remember that when my brother determined to attend the Ontario Veterinary College in the middle seventies, there were many shakings of the head and friendly expostulations at the utter waste of the money paid to learn to be a "horse doctor." What did not come by instinct could be learned from the blacksmith or the neighbours, so why pay out good money?

Largely owing to the Ontario Veterinary College, to the work of Dr. Andrew Smith, his colleagues, successors and students, the whole system has changed within my recollection. Rule of thumb has given way to scientific accuracy, so far as scientific accuracy can be attained in such matters. Anatomy, physiology, pathology, pharmacology, bacteriology, have come to their own in veterinary as in human medicine and surgery. The trade has become a profession; and what of necessity follows and is perhaps the most important matter, the practitioner has ceased to be the nondescript, little-regarded horse doctor, and has become the respected and self-respecting Veterinary Surgeon, the man of science, the member of a learned profession.

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That there are exceptions, is true. There is here and there a member of your profession who has not sloughed off the ignorant boor; there are those who, having passed their examinations, proceed to forget all they safely can or may, and retain just enough to enable them to make a living. But such there are in every profession—in medicine, in law—and probably there is no greater proportion in yours than in any other. There is the tobacco-chewing, whiskey-drinking student and practitioner; there is the individual, student or practitioner, who imagines he shows himself wholly admirable when he acts the rowdy and larrikin; but then I have seen the like at Osgoode Hall, and I am not sure that the medical college is wholly free from them, and possibly not even the solemn halls of Knox. The fool ye have always with you; and "though thou shouldest bray a fool in a mortar among wheat with a pestle, yet will not his foolishness depart from him."

There are black sheep in every flock, but it can, I think, be fairly said that the graduates of this College have, with very few exceptions, borne themselves as becomes them, in view of their opportunities.

I do not hope to influence the unworthy, but shall address myself only to those who respect themselves and their calling, and who will not refuse to obey the command "freely ye have received, freely give."

"Every one owes a debt to his profession": so said the wisest, brightest, meanest of mankind, Lord Bacon. It should be the aim of every member of every profession to leave it better and more advanced than he found it; at the very least that it will suffer no discredit, much less dishonour, through him and his life. But it is not that of which I am to speak: it is the duty of the graduate toward his country; and here I find no difference between the graduates in veterinary surgery and in any other course.

In our system, painfully wrought out through the centuries, the product of the thought of sages, the valour of heroes, the blood of martyrs—the real source of all power is the people; and we English-speaking people pride ourselves upon our democracy. There may be—there is—some little difference between our citizens in their views as to how far the will of the people may be checked, temporarily at least; but there is none in the thorough conviction that the will of the people must prevail when that will is quite clear and is unmistakably expressed. Numbers of us call themselves Conservatives, but the most conservative of the Conservatives is far in advance of where the most radical of the Radicals stood no long time ago. The most ardent Reformer of the Tudor or Stuart time would gasp at the freedom permitted now by the most reactionary political party.

The people must—and does—rule. But what is the people?

No doubt when voters come to deposit their ballots in the ballot box they say what is in their mind at the time. This may be the result of improper inducements: money, promise of positions, what not. All such are to be deprecated: any one who votes for any such cause is a traitor to himself and to his fellow citizens. By the law made by and for the citizens, he is entrusted with a voice in the affairs of the country, a vote to express that voice. This is given him not that he may make money out of it, not even that he may benefit himself by it, but that he may use it for the benefit of the country at large. Let me illustrate. Many thousands of Canadians believe in Protection. If any man thinks that Protection will benefit him pecuniarily there is a duty cast upon him to vote for Protection if he also thinks that it will benefit the country at large; but if he honestly thinks that it

will injure the country generally, he is a traitor to his trust if he votes for it simply because it will or may benefit himself. Thousands and tens of thousands of Canadians are convinced Free Traders. If one of them believes that Free Trade will put or leave money in his pocket and at the same time be good for Canada he is wholly entitled to vote Free Trade; but if, thinking it good for his own pocket, he thinks it bad for the country, he is recreant to his trust if he tries by his vote to bring it about.

Of course, near as a man's shirt is to him, nearer still is his skin, and it is no easy task to discriminate between one's own gain and his country's. It is a matter of infinite difficulty to see clearly when one's own advantage is concerned. We are too prone to consider every public question from our own point of view, the point of view of personal advantage. When we are told that we should aim at the "greatest good of the greatest number," we are too apt to consider that the greatest number is Number One. Now just here is one of the duties of the graduate toward his people. Your education has been of such a character as to "scientize" your minds, to make your thinking scientific and based on principle. Unless you have quite failed to take advantage of the training which you have undergone you must be able to take a broad view of all matters, and to discriminate between the merely personal and the general. Your duty is the same as that of all other citizens of Canada, but your education has—or should have—better fitted you to perform it.

There is, however, another and a higher duty which you owe your country, and that is, to exercise a beneficial influence on others. In all communities there must be leaders. If the educated do not assume that position, others less well-qualified must and will. I am sick and tired of the talk—largely cant—heard too often in educated circles, about the "party politician," the "ward politician," the "boss" and the like. If those who should lead abdicate their rights let them hide their heads and not whine if those whom they consider their inferiors come to the front and pick up the baton which they have declined. And most of our politics must be party politics—there is no other way we English-speaking peoples have discovered whereby we may govern ourselves, than the party system; and every good as well as every ill, politically, has been and must be brought about by political parties. To refuse to take part in politics because it involves partyism is like refusing to belong to a church because it must be of one creed or another and cannot include all Christians.

Disinclination is often shown—or at least expressed—to join in politics because of some supposed degradation involved in political pursuits, as though the exercise of rights for which hundreds of our ancestors have fought and died were something unworthy. Some superfine people distinguish between the politician whom they affect to contemn and the statesman whom they unaffectedly admire. The main difference is that the statesman is dead. The *laudator temporis acti* naturally lauds the dead and gone, and cannot or will not appreciate the living and actual.

Dirty politics? Yes, there is dirty politics just as there is dirty theology—the odium theologium is proverbial—just as there is dirty law and dirty medicine. No one has a right to refuse to take part in politics because politicians abuse each other unless he would refuse to be a clergyman or a lawyer because the members of these professions, in their conduct towards each other, are not always perfect

ensamples of sweetness and light. In like manner no one has a right to avoid his share of public duty because it is difficult, full of perplexities—because it may not be possible to see clearly the very best thing to do—any more than one does not refuse to become a doctor because his science is not fully developed and he cannot cure all diseases, or a lawyer because he cannot win every case.

Let me here say a word for municipal politics. Our municipalities, which a Governor who did not like them called "sucking republics," are the very nursery of self-government. The matters deaft with in our municipal councils are such as touch our daily lite and no small part of our comfort and happiness depends upon the wisdom of alderman or councillors. We are all prone to grumble at our municipal rulers—grumbling is an inalienable right of every freeman, and God forbid that we should stop grumbling. But someone must do this municipal work; if you think you can do better, say so, state your reasons and try your hand. There is no disgrace in being a municipal politician, but the reverse, unless you are a municipal politician with no vision above the petty advantage to be gained by yourself or a clique or a party by your being such a politician. The municipal problem is necessary and no man is too good for the job.

Whether in Municipal, Provincial or Dominion matters, the graduate should establish his leadership if he can, if he is the best qualified to lead; and he should be thus qualified unless he has missed his opportunities and wasted his time.

He should be, and unless he has not been educated as he ought, he must be capable of directing the thought of those not so well qualified along the right lines. "Let all thy ends be thy country's." It is unfortunately the case that much of our Canadian politics has tended toward depreciation of political opponents, their principles, their objects, their actions. Perhaps in some cases the criticism was justified and proper, but surely it is time to cut away from old feuds and face the facts as they are. The old way with religious sects was for each to assail every other. That time has to a very great extent gone by, and now any church shows its greatness by advancing the cause of Christianity and elevating humanity, not by captious criticism of, much less furious assault on, the other churches. not at this long last unite in advancing our common country without captious criticism of, or furious assault upon, those of a different political creed? I do not mean by this, that anyone should give up any part of his own political belief any more than the Presbyterian gives up any part of his religious belief when he joins hands with the Anglican, the Methodist or the Baptist. The essential loyalty to Canada and British connection of the great mass of the people no one doubts and that should unite all Canadians in one family.

At the present time we are at war, and more than ever we should be one people. You should do your best to make that aspiration a solid fact.

But there is now a most pressing duty not known to us in times of peace; a duty different in kind, not simply in degree.

We are now in the midst of a world war for democracy, for the rule of the people.

The right to govern ourselves, whether we do that well or ill, is the birthright of all the English-speaking people, the aspiration of all those in the world whether they speak English or not, whose views of human liberty are those of Hampden and Pym and the heroes of 1688.

That all power rightfully proceeds from the people and that all power must be exercised in a responsibility to the people is the cardinal principle of our British folk. Now compare that with the Prussian ideal—I say Prussian, because it is the Prussianism infecting Germany which makes Germany dangerous to-day.

The Emperor loudly and emphatically contends—he does not contend in Germany, for no one says him nay—that he draws his power from God alone and that his dominion over the people is of divine right, to deny which is blasphemy as well as treason. Our King is glad and proud to owe his throne to an Act of Parliament, and to admit that an Act of Parliament could take it from him. The Kaiser despises all Acts of Parliament (except those which grant him money) and says "God alone gave me my throne—my people have nothing to do but to obey; they have no right to deprive me of what I do not in any sense owe to them." A personal rule more absolute than was ever claimed by Charles the First or his son James, more absolute than England has ever seen since Queen Elizabeth's time, broods over Germany, the gift of Prussia.

It was because a mere subject might not be more than a mere servant that the pilot was sent overboard, Bismark was cashiered. Just think what it would mean to us, if the King were to dismiss Asquith because he used his own judgment wisely, and thereby acquired public favor, or if the Governor-General were to dismiss Sir Robert Borden, or the Lieutenant-Governor Mr. Hearst.

Parliaments the German Empire has—in some cases, elected in large measure by the classes—but no Parliament can dictate or change a policy; all that Parliaments can effectively do is to vote money.

In municipal matters the rule is almost equally arbitrary. In the municipalities as in the Empire the government is effective, the peace is kept, peculation is rare, the people's money husbanded, but, throughout, the people have nothing to say; they have to do simply as they are told, obey this regulation and that and have not even the right to grumble at their masters. Comfort and reasonably cheap living are attained, but at the sacrifice of initiative, of spontaneous thought, of freedom, of everything involved in the word "democracy"—the phrase "government by the people."

Now if the Prussians were content to apply their principles to themselves and their own land only, we would have no right to complain. Our American cousins may take up one year out of four in the turmoil and anxiety, the dislocation of business and uneasiness of a Presidential election; they may rejoice in a system which does not permit taking the opinion of the electorate except at times rigidly and unchangeably fixed by a written document; they may reverence their Constitutions, etc., in what seems to us a most undemocratic way. That is their own business; and it would be a sheer impertinence in any but an American to criticize; they do not seek to impose their system upon others, and so have the right to expect others to leave it alone in word and in deed.

The Prussian has imposed his system, in fact, upon all Germany, and makes no concealment—or at least until but the other day made no concealment—of the doctrine he entertained that he was to mould the world to his ways, that he was the predestined regulator of the affairs of all peoples.

It is the unutterable and colossal self-conceit of the Prussian which is the real danger threatening the world to-day. He first, with his doctrine of divine right, places the Kaiser very little if any lower than the Almighty; then, as a necessary consequence, proclaims that the State, personified in the Kaiser, does not exist for the individual but the individual for the State. By an easy gradation

he arrives at the conclusion that this divinely guided State owes no duties to any other State, that it is a law unto itself, that what it desires, territory or otherwise, it should take, and that weaker nations have no right to exist. But it is his Kaiser, his State, of which this is predicated, and he gladly and conscientiously finances against a Russian Czar or a British King. He is moved to righteous indignation at the thought that any other nation should exercise the privilege of taking anything belonging to Germany or which she wants, whether it be the food or munitions of war she so much desires, or the territory of East Prussia or German Poland; but he has no qualms in annexing an Alsace or a Lorraine and, if he could, a Belgium, or in exploiting the mines and factories as well as the people of occupied territory.

He, the Prussian, is the Superman, the more than man, and no one has any rights which he is bound to respect. His ways are the right ways; all others are but the feeble movement of the imbecile or the rudeness of the barbarian.

These ideals necessarily work out in principles of International conduct. Instead of the great and unchangeable rules of the moral law, which we are taught are binding upon nations as well as upon individuals, he has boldly adopted as the cardinal rule: "Might makes right, might is right, what I can, I ought and will."

No treaty will bind him, for what is a treaty but an agreement which is advantageous to him when made, but when it is no longer so, is for that reason alone not binding on him? A Belgium whose neutrality he has guaranteed must give up that neutrality if it is inconvenient for him; let the other guarantors look out for themselves, but let the guaranteed bow before him and his might. No scrap of paper stands or can be allowed to stand in his way. The good old rule sufficeth him;

"The simple plan,
That they should take who have the power
And they should keep who can."

It is this conception of the German as Superman, instead of a mere survival of the primeval and medieval, which has made the nation drunk with conceit, blind to all justice and right and to everything but what they think may tend to the immediate advancement of the German people.

This strange blindness has seized even the intellectual classes. Can any read the apologies put forward by the German theologians and scientists without seeing that they have lost all sense of logic and all feeling for evidentiary fact? Any Canadian jury would laugh at a counsel who advanced to them an argument so full of misstatement of facts and so deficient in all intelligent reasoning.

This war is a war of aggression, a war for conquest, conceived in greed and brought forth in shamelessness—its first act a brutal invasion of a peaceful and neutral country, the attempted destruction of a free people, an act in which Prussia did not even see iniquity or aught she did not have the right to do. That it was iniquitous in the eyes of the world she saw with unfeigned amazement, not understanding that another could have any standard of international morality but her own. When it did enter her mind that neutral nations looked upon her conduct with abhorrence, her attempts to justify it would have been laughable were the subject one which admitted of light treatment—monstrous compounds, nine parts of plain lying and one of silly sophistry.

Checked with the help of British troops in her expected triumph at Paris, she has vented her hatred and brutality upon the once-happy civilian population in her power. Priest and layman, man and woman, young men and virgins, yes,

even the innocent babe in the cradle, are victims of her rage; none so old, so young, so innocent as to hope to escape the Hun. It was when about to invade China that their Emperor held up to German soldiers for their admiration and example Attila the Scourge of God, and his Huns. There was no need of such a sermon when they were invading Belgium and France; and perhaps it was because Attila had no fleet that his example was not quoted for Southampton and Hartlepool.

The destruction of innocent and neutral ships followed naturally and neces-

sarily from the fundamental conception of right in these modern Huns.

They have threatened more such treatment when they obtain a foothold in the British Isles. If they succeed, they will be as good as their word; no sense of humanity, much less of Christianity will restrain them. Britain invaded, the British must pay the extreme penalty for that sentiment of obligation to their pledged word which induced, nay, compelled them to come to the assistance of Belgium outraged, France sorely pressed and outnumbered. Britain snatched away from the very jaws of the ruthless wolf, the prey caught and almost mastered, the wolf will not forget that disappointment, but will fully avenge it if the time comes and opportunity is toward.

We pray that the time will never come, but let us not be too confident. The splendid Fleet plies to and fro in front of German coasts; so long as that is intact a fair degree of confidence will prevail that no invasion is possible. But the arms of Germany may be successful in pushing back the forces in Belgium and the north of France. The attempt has been made more than once, and may be made again and yet again. The fortunes of war are proverbially uncertain, and it is within the realm of possibility that the attempt may be successful and that a great stretch of coast may come under the power of the enemy. The Fleet may need to be extended, the thin line may tempt the so-far intact German Fleet—and the result is in the hand of God.

It is our glory and our pride that our Canadian boys are at the front in that scene of war, where the greatest drama of all time is being played; and we hope and pray that they and their comrades may be successful, as we know that their comrades will have reason to be proud of them as they of being Britons and Canadians.

But more men and more men, and still more men, are needed. They are imperatively called for, and can we neglect that call? We Canadians are the inheritors of the glory of England, of Scotland, of Ireland; and we have our own history as well. We have been sheltered under the flag of the Old Land, and none dared make us afraid. Are we now to turn a deaf ear to the insistent call for our help? We have for a hundred years said to the Mother Country, "We shall not let thee go. Intreat me not to leave thee, or to return from following after thee: for whither thou goest, I will go; and where thou lodgest, I will lodge: thy people shall be my people, and thy God my God." This was when her care was necessary for our advancement, her protection necessary for our peace. She stood by us all through those years, and nothing was too good for her child. Now, in her hour of conflict, what is Canada to do?

There can be but the one answer—send her men, contingent after contingent, till her lines are full and can hold no more. Not one stricken field has Britain seen since Waterloo upon which Canadians have not stood and fought for the Empire. That was when there was no real danger of her destruction. From far-off Kars, where the Canadian Williams held the fort against an overwhelming mass

of assailants, to Paardeberg, won by Canadian dash and gallantry, everywhere our men fought and won. The call now, when the need is more apparent, is more urgent, cannot be disregarded.

I was told the other day by a young man of military age that it required as much courage to remain behind as to go to the front. I answered, "What a lot of very brave men there are nowadays!" I do not propose to insult the young manhood before me by supposing that here there are any who do not offer themselves for the Empire of those who are of the material from which useful soldiers can be made. Those of military age who remain behind and fail to fight for the Empire should be of two classes only, the cripple and the coward. It is sickening to see in some places, the crowds at hockey matches and the like, of hale and strong young men, whose whole life has been one of ease under the flag and who now cannot recognize their duty to fight for it.

Are there some who now say that there is no need of their joining the regiments, that the British Regular forces are sufficient to ward off all danger? The call is for men and more men, a call from those who know; and though it may be that the British forces, including Canadians already volunteered, will be sufficient to secure safety for Canada and the Empire, what part do they play, what figure do they cut, who are content to be protected by those whose call is no stronger than their own? In England it is the custom in some parts for young women to present those young men of their acquaintance who should and do not volunteer with a white feather. Is there any need of the maidens of Ontario doing that? If so, the white feather will be a burning badge of shame forever to those who wear it.

Some there are who cannot go—some are too old or too feeble. This is at least open to all who cannot go by reason of age or infirmities—they can give towards the better arming of those who do go; and all, young and old, man and woman, can help in supplying comforts for the fighter in the trenches, the sick or wounded in the hospital.

Even of those who are the stuff soldiers are made of, some must remain at home. Business must go on as usual or better; Canada must produce as much as ever, and more.

Whether with the sword and gun or with the sower and reaper, the spade and the hoe, or with any implement or in any profession, a man should work, he must decide for himself. If with a full sense of his duty to his country and his empire, without cowardly fear of wounds or death, with a careful consideration of all the circumstances of his case, he himself decides that he can do more work and better for Canada and the Empire by remaining at home, his decision must be respected. If, however, his decision is based upon the thought that by remaining at home he may make more money for himself—do more good to himself—he is as bad as a coward, he is a shirk, and will richly earn the contempt he is sure to meet—he will not be able to look in the face the returning heroes in khaki. Heaven grant that there are none such here.

THE UNION LEAGUE OF PHILADELPHIA

DEDICATION

OF THE

MEMORIAL ROOM

Orator

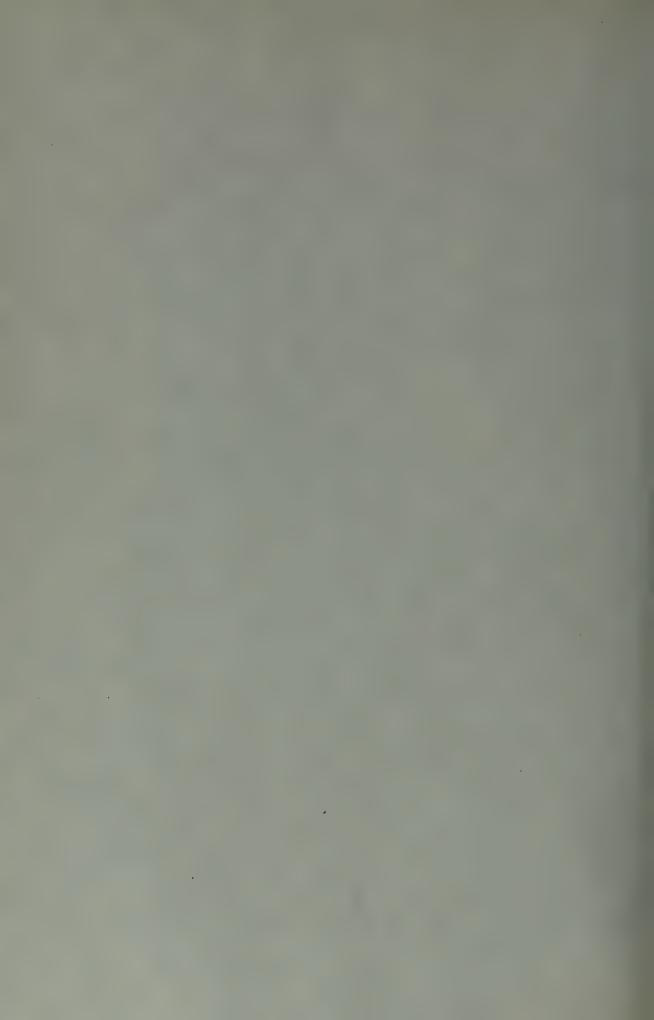
HONORABLE WILLIAM RENWICK RIDDELL

Justice of the Supreme Court of Ontario, Toronto, Canada

PHILADELPHIA

November 24

1917











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PHILADELPHIA November 24 1917



UNION LEAGUE

Philadelphia, November 24, 1917.

MR. GRIBBEL.—Gentlemen of The Union League:—Fifty and five years ago a few faithful men having the form and seeking to demonstrate the power of patriotism. founded The Union League of Philadelphia. born in a great crisis. The men who formed it loved the Liberty and Union of the United States more than they loved life. In the darkest hour of the War of the Rebellion they put themselves and all they had, and all they hoped to be into the support of the nation. There was not a trace of self-seeking in all their labors so long sustained. They never faltered and they never counted the cost of their fidelity. Ten regiments were raised and equipped and sent to the support of Abraham Lincoln in his defense of the Constitution and the Flag. [Applause.] Day and night these our forefathers, with an eye single to the country's preservation, spent themselves in sacrifice.

Tonight we gather to again celebrate the courage, the ability, and the complete success of these our ancestors. We glory in their history and rejoice in our patriotic descent from them. With devout thanksgiving we lay our Laurel and our Rosemary upon this altar raised to their memory, and pray that in this our day of trial we may be found worthy of our descent. May the God of our Fathers inspire us with the courage and active

devotion of The Union League of 1862. [Applause.] May our children be inspired in coming years by the history of The Union League of 1917 [applause], and so the object of our fathers be established and their works follow them.

Fifty and five years have brought to this organization numbers and possessions not dreamed of by the Founders. The country they helped to save has grown to great wealth and power. Its borders have spread beyond the western seas. With Jacob it may say, "With my staff I crossed this Jordan and now I have become two bands." Our national isolation of 1861 has disappeared, never to be seen again. We have seen the troops of the United States marching through the streets of London and Paris. The Stars and Stripes have floated over Parliament House in Westminster and have been carried at the Shrine of Napoleon. Pershing has bent at the tomb of Lafayette and said a thing that will become historic [applause], and down through the ages will ring his cry, "Lafayette, the Americans have come."

This very night, as we sit here, our country's defenders—your defenders, and my defenders—are fighting in the trenches in France and sailing British waters, defending British and other ships from the devils of the deep. [Applause.]

What does this all mean? Simply this, that in the bloody struggle of 1861–1865, during which this Union League was born, government of the people, by the people, for the people was saved in these United States, in their isolation, from a domestic autocracy. Now, in our intimate world-wide relations of 1917, we must preserve our charter of freedom from destruction by a foreign

autocracy. [Applause.] Since Sumter was fired upon nothing has been heard more ominous of danger to these United States than the Kaiser's warning, "I will stand no nonsense from the United States."

My friends, we celebrate this fifty-fifth anniversary in another struggle for the very thing for which our fathers fought. Our responsibility is that we defend our inheritance. If we fail their sacrifices were in vain. Upon us has fallen a greater task than fell to them, and I say it advisedly, we shall succeed solely by the same willing sacrifice of men and treasure. The world is now paying a penalty for our lack of preparedness. But we have begun. We have raised billions for defense, and these United States will never spend one cent in tribute. There are dark days ahead of us. Again the call is for men and our best again are going, and, thank God, again rises from their ranks, "For three years or during the war." [Applause.] We who cannot go will sustain them by all our powers and all our possessions. Our patriotism will not end by hanging our flags from the third-story windows of our houses. Every soldier and every sailor going abroad must know he has all the possessions of the United States and the heart of every American, man and woman, in the United States supporting him. [Applause.]

To this full measure of devotion this Union League of 1917 pledges itself with all that it has and with all that it can get, appealing to the patriots' God for success.

I said there are dark days ahead of us, but that does not mean that while we face the problem, we minimize our strength, nor do we minimize our determination, but with one heart, with one voice and with one object, and that not a selfish one, the United States faces the greatest test to which they have ever been put, and again, The Union League pledges itself to support the Government of the United States. [Applause.]

Gentlemen, for generations this country of ours has been separated on its northern border from another country by four thousand miles of boundary line, upon which there has not been a fort, a cannon, or an armed force. In comfort we have looked across at each other and said, "Behold how good and how pleasant it is for brethren to dwell together in unity." These two countries have shown the world, in such measure as has not been demonstrated anywhere else in the world, the peace that lies in democracy. Today, Canada and these United States are fighting to make the world safe for democracy and in that still greater task that lies beyond us, beyond the war in which we are engaged, Canada will be found side by side with the United States fighting that greater battle in making democracy safe for the world.

It is our great privilege to have with us tonight as our guest of honor, a distinguished Canadian who knows us and understands us; one who has addressed more people on this side of the line than any other Canadian living. Yale University called him last year to deliver the Dodge Foundation lectures on "Responsibilities of Citizenship." In our Liberty Loan campaign which we have just finished so gloriously, in the northern part of New York State when they thought they needed a little extra ginger, they called our guest of honor from Canada to come to the United States to speak in the Liberty Loan campaign, and those of you who know him were not surprised when you found the loan was over-subscribed. In addition to this, gentlemen, he has been my valued friend

for many years and I am the better man for having known him.

It gives me great pleasure to introduce to you, to address you on "The American and Democracy," the Honorable William Renwick Riddell, Justice of the Supreme Court of Ontario.

Hon. William Renwick Riddell. Mr. President and Gentlemen of The Union League:—I never consider myself a foreigner or an alien in the United States of America [applause], and I never less considered myself an alien or a foreigner than I do at the present moment when I am received by The Union League of Philadelphia. Afret the kind words, sir, which you have used concerning me tonight and, especially when I see before me and over my head, my own flag, I am at home, and I call you my own, bone of my bone, and flesh of my flesh—I am one of you.

I am peculiarly proud in being asked to address you upon this occasion, the important anniversary of the year, not with a personal, but with a national pride; because this honor is in no small degree a courteous recognition of the fact that my country is to be taken into consideration in the United States, and, therefore, in the world.

But a few years ago, as years are counted in the life of a people, Canada was, in the minds of many if not of most Americans, not much more than a geographical expression, connoting a narrow fringe of more or less civilized settlements on the Arctic side of the "American Lakes" with a vast expanse of barren territory behind, given up to wild animals and scarcely less wild men, eking out a scanty and precarious livelihood by hunting and trapping, procuring northern furs for the benefit of the inhabitants of a more benign and luxurious clime.

Now, Canada, with her ships on every sea, her commerce in every mart, with modest pride ranks herself beside the older and stronger and greater nation to the south, and demands recognition as a sister-and she has that claim allowed. The celebrated Greek, cordially and candidly admitted that, had he been born in a small island instead of in Athens, he never would have achieved greatness, so, I, having no claim to eminence except the fact that I am a Canadian, am quite sure that I should not have been called upon to address a club of this importance and assist in this event, were it not that my country is now considered worth while. And, there is another, a warmer and a dearer thought, one which fills me with greater satisfaction and delight, and that is that not only the invitation itself, but the manner of the invitation and the subject upon which I am asked to address you, clearly show that in your eyes, although—or should I say because? -Canada is one of the free, self-governing nations constituting the far-flung British Empire, bound with the silver cord of loyalty to the Great Mother across the sea, you have the heartfelt conviction that in everything that is worth while, worth taking into consideration in the present tremendous crisis of the world's history, the United States and Canada are one. [Applause.]

"Fellow-citizens," I may not call you with legal and technical accuracy—as I heard an American the other day address an audience in Toronto—because, by the rules of international law, you and I are foreigners and aliens to each other; but by a right which as far tran-

scends the rules of international law as the heavens are above the earth, by the eternal law, by the elemental and essential law of human nature, by that law which God Almighty has placed in the bosoms of every one of us, I claim you as brothers. [Applause.] You are, I have said, bone of my bone, flesh of my flesh, for in as true a sense as though they were natural persons born of the same father and mother, these peoples, the United States and Canada, call each other sister, with mutual love, with mutual confidence, aye, and with mutual pride and admiration. [Applause.]

And the fact that the American early devoted himself to the cause of democracy and has consistently sustained it, has had no little to do with the consummation which has so long been devoutly wished and hoped for and now at last has come to pass. I am not one of those who believe, or pretend to believe, that democracy was born on the Fourth of July, 1776, and that her birthplace was upon this continent; I do not believe, nor do you believe, that Freedom was unknown and non-existent before the Declaration of Independence. Philosophical students of the history of law and political institutions are fond of drawing the distinction between the Roman and the Germanic conception of the relation of the individual to the state: they point out that in the Roman theory, the individual has no rights which the state is bound to respect, that laws for the protection of the individual are mere voluntary concessions by the state, concessions, which, at its discretion, it may withdraw; while, according to the early Germanic conception, the rights of the individual are not based upon some voluntary, modifiable and revocable law of the state, but that personal rights are born with

him, they follow him everywhere, and decrees derogatory therefrom are null and void.

How far the modern German has gone from his ancestral principle, we need not now pause to consider, nor shall we here trace the natural if not inevitable result of the two theories in the conception of international relationships.

What is democracy? Democracy is not a form of government. Republics in form may be autocracies in fact or oligarchies in fact. The republics, so-called, of ancient Greece; the republics, so-called, of medieval Italy; the republics, so-called (many of them), of Central and South America during our own times could not be justly dignified by the name of republics as we understand the word; and the Roman reo publica was far from being a republic. What, I ask, was the form of government when Napoleon was First Consul of the Republic of France?

Nor because the form of government is monarchical or even autocratic, is it necessarily undemocratic. England has yet a king; George the Fifth has the same titles which his predecessor, Henry the Eighth, and his predecessor, John, had centuries ago. The army is his and the navy, and all transactions are in his name, but our King, thank God, unlike some of his predecessors, contents himself with reigning, and leaves the ruling to his people to whom it rightly belongs. [Applause.] You all know, of course, the well-known distinction between the English king and the American president: The English king reigns but does not rule and the American president rules but does not reign.

Democracy is a manner of thought, a bent of the mind

and soul, it is the spirit which giveth life—not the form, the husk, the external, the letter which killeth.

What, then, is the history of our race? Those splendid savages, or half savages, who lived near Jutland, the only tribes in Central Europe which refused to bow the knee to Imperial Rome, the ancestors in blood of many, in democracy of, I hope, all of us, the Angle, the Saxon and Jute, ruled each man his own family. Their chiefs were not chosen by God, they were chosen by the people; the final authority rested with the people not with an irresponsible overlord, and the chief who did not satisfy the people was unfrocked as quickly as—nay much more quickly than—an American mayor. They were not troubled by constitutional limitations or hampered by charters which confined the election to certain particular days and certain particular months in certain particular years—the polls were always open in those days. They had a true, although an undeveloped and embryonic democracy.

Through all the welter of Saxon and Norman times, the spirit of democracy never died; even the iron Conqueror himself never conquered the independent Englishman. Through the times of the Plantagenet, the Lancastrian, the Yorkist and the Tudor, down to the time of the Stuarts, every now and then democracy manifested itself in some form or other. From John, the astute, wily and able king—(those make a great mistake who think King John was a fool: he was not a fool, but an exceedingly able king)—his subjects extorted a charter, the Great Charter which contains, as in solution, the principles of democracy, awaiting but the shock to become crystallized. The first Charles lost his head because he did not understand that the people were

determined to rule; his son lost his throne because he listened to the conventional flatteries of courtiers and believed these to be the voice of his people.

The Bill of Rights in 1689 laid down principles of democracy in a more systematic form; and democracy was well advanced before George Washington was born. Freedom of speech; freedom of the press; freedom of assembly and petition; no taxation without representation; no gift or benevolence to the king unless made by a free Parliament freely elected by a free people and debating freely: these principles the Fathers of the American Revolution brought with them, either in person or by their ancestors, to this continent. It needed but a series of sensible and sympathetic monarchs, or even one such monarch, to have democracy fully developed in England before the American Revolution. Unfortunately, near the end of the eighteenth century, a pig-headed, half-crazed, ill-trained, ill-balanced German, educated by a fool of a German woman, whose voice he never forgot, "George, be a king, George, be a king," in the providence of God and by the accident of birth and religion, came to the throne of the United Kingdom and believed he had been sent of God to govern not only the islands but also this great continent. The Colonists of the Thirteen Colonies did not desire to leave the British Empire—none more loyal than they—but they did desire and were determined to govern themselves: and when it came to the point where they had to choose between governing themselves and continuing part of the British Empire, they did not hesitate long. Selfgovernment was theirs and they determined—even though it meant leaving the British Empire—they determined to govern themselves. The Colonists were advancing no new doctrine: they were but applying to their own case the principles which they had brought with them across the ocean. But it is their immortal and never-fading glory that they cast into the scale their fortune and their lives; and that after a weary and perilous struggle, they emblazoned, sun clear, as in the skies, the principles of democracy, never again to be dimmed by King or Kaiser, by Philistine or obscurant.

You will not ask a Canadian, I dare say, to believe or to say that the Fathers of the American Revolution were any more patriotic, any more able, any cleaner, any more honest than those who opposed them. A large proportion of the American Colonists, not far from half, and perhaps more than a half, thought that while the king and his government were unwise, even wicked, vet that in the progress of time, proper government would be granted to them; and they opposed the Fathers of the American Revolution. These United Empire Loyalists, as we proudly call them, these Tories as they are called with contempt in your school histories, have suffered the same fate as their predecessors in the previous century—it is the old story of the Roundhead and the Cavalier over again. One class of men so attached to Liberty that they will cast off all bonds, break away from all old fashions, and separate themselves from the heritage passed down to them by their forefathers, in order that they may be free. Others, desiring freedom with a true desire, may shun the name of traitor, and may desire to hold fast the old bonds and the beloved connections they have inherited. These United Empire Lovalists have, in the United States, suffered the same fate in name and fame as the Cavaliers in the Revolution against Charles the First suffered or would have suffered had there been no Restoration. In Canada, their name and fame is that of the Cavaliers after the Restoration and during the times of Charles the Second. Those men in 1783, when the independence of the United States was admitted, made their way into the northern wilderness, and made their home in that Canada from which I come and of which I am so proud—that Canada which is now even more than she has been for fifty years, your sister country, the old feuds forgotten. Of these men who sacrificed everything they had from devotion to the Empire and Flag, who refused to barter their fealty for their confiscated lands, our Canadian poet sings—they

"Got them out into the Wilderness,
The stern old Wilderness;
But then—'twas British Wilderness!"

" . . . they who loved The cause that had been lost—and kept their faith To England's Crown and scorned an alien name, Passed into exile; leaving all behind Except their honor. . . . Not drooping like poor fugitives they came In exodus to our Canadian wilds, But full of heart and hope, with head erect And fearless eye, victorious in defeat. With thousand toils they forced their devious way Through the great wilderness of silent woods That gloomed o'er lake and stream, till higher rose The Northern Star above the broad domain Of half a continent, still theirs to hold, Defend and keep forever as their own, Their own and England's till the end of time."

But those men, noble and truly patriotic men as they were, were like Falkland, and his fellows who, honest themselves, trusted in the autocratic and therefore untrustworthy Charles, and followed their king to the detriment of their freedom. So these United Empire Loyalists with all their proud record may be thought to have failed to attain to our conception of democracy in that they kept their faith to the detriment of their own political freedom.*

"To the Editor of The New York Times:

A good many American journalists are at present comparing the 'Tories of the Revolution' with the pacifists and pro-Germans of Against this I beg to record my emphatic protest. so-called 'Tories of the Revolution,' remembered and honored by us Canadians as the 'United Empire Loyalists,' and the founders of our great Dominion, were a very different class of people from the sedition-mongering gang at present in your midst. patriotic citizens of the British Empire, irreconcilably opposed to its dismemberment and willing to wait for a peaceable solution of the differences with the mother country, which they felt sure would eventually come. They comprised at the breaking out of armed hostilities at least one-half of the entire population of the thirteen colonies, but being unorganized were at a great disadvantage. As it was, they fought and bled and died or suffered the spoiling of their goods and cheerfully went into exile for their principles. As a result of their devotion to a lost cause (or a cause that seemed to be lost) we have the Dominion of Canada today, with a population nearly, if not fully, three times as great as that of the original revolting colonies and covering one-half of the American continent. Your modern historical writers, such as Van Tyne, Sydney Fisher, and others, have frankly conceded the bona fides and patriotism of the American 'Tories.' Their patriotism, which put the whole above the part, was, I think all fair-minded Americans will admit, just as glorious and just as worthy of respect as that of their opponents. In justice to the memory of these heroic, high-minded (if from your own standpoint mistaken) men, I must enter a vigorous protest against comparing them with the aforementioned gentry. The Loyalists of America were men who fought and lost and won, and there is no better American strain today than their descendants in Canada. Their monument is the great Dominion of Canada, and you Americans have just as much reason to be proud of them as we Canadians.

"Wolfville, N. S., Nov. 8, 1917."

^{*} The last and most flagrant insult to these heroic men was reserved for the present year when they were compared to the prowling brood of traitors open, or half-veiled, now the curse of this Republic. I cannot better express the Canadian's feeling of indignation at this comparison than by reading a letter to a New York newspaper from a Canadian.

It is idle to speak of the American Revolution being produced or being caused by a tax here, an impost there, a stamp here, tea sent there: these were the mere occasions, but the cause was that the American knew that he could govern himself and he was determined that he should govern himself. It is equally idle to speak of it having been a rising against Britain at large. The better part of England sympathized with the American colonists—and when I say the better part of England, I mean precisely what I say, not perhaps the larger number of Englishmen, but a large number of the greatest minded and best Englishmen sympathized with the American colonies. All of Scotland, practically, sympathized with the American Colonies in their struggles; and when they had succeeded there was no country more rejoiced than the better part of England and the greater part of Scotland. [Applause.] I know how hard it is for some Americans to understand that England has always taken a pride in this great nation, this great United States. I know some of you find this hard to believe, because I have seen the books you read at school, one of the teachings of which was that England is the sworn enemy of the United States. That is a lie, it never was true; and if it ever had a semblance of truth, even that semblance of truth has gone years and years ago. England has always been proud of the United States; but what signifies vastly more than that may not be so manifest. Democracy in England was drooping, was almost smothered by Royal power, but on the triumph of America it was heartened and, ever since that time, the democracy of England has looked to the democracy of the United States as an inspiration. The great example of the United States has had a tremendous

influence in England, which is now as democratic as any nation on the face of God's earth. While there never was any republican sentiment in Canada that was not negligible and there is not today, the United Empire Loyalists, while they insisted upon remaining a part of the British Empire and upon living under the old flag under which they were born, remembered also that they came from freedom-loving lands where they had had self-government, and which were determined to continue to have selfgovernment; and they never quietly submitted to any tyranny on the part of England thereafter. In every country there are obstructionists; in every country there are reactionaries, and when in Canada a struggle arose between the reactionaries and democracy, we always looked down across the international boundary to the example of the United States, and the United States has, for generations, been an inspiration and an example for the people of my country; we too in Canada are as democratic as it is possible for any people to be.

It may be that Canada would have been as democratic as she is today had there never been an American Revolution, but that democracy almost certainly would have been extorted by force, and it would have been born amidst the roar of the cannon and the flash of the bayonet and not in the quiet of the Council Chamber. That Canada and the rest of the British Empire today are free, is due largely to the example of American democracy in 1776. I have often said that the embattled farmers who stood and fired the shot heard round the world, their lines uneven but unyielding, owing little to the drill sergeant but much to the strong and gallant heart, fought not only for themselves and the rest of those of the Thirteen Colonies, and

the great States that were to proceed from the Thirteen Colonies, not only for their descendants for generation after generation in these United States, but they stood there for Canada too, for Australia and New Zealand, and South Africa, aye, for England herself and all that makes the British Empire worth while. One Bunker Hill was enough: the bitter but salutary lesson was learned. One Revolution was enough; the lesson was learned, and hard as it was for a proud strong nation like Britain, she learned that her children would not submit to be governed by her, as they knew they were fitted to govern themselves—and so colonial self government was born.

"We must be free, or die, who speak the tongue That Shakespeare spake, the faith and morals hold Which Milton held."

The democracy today is the offspring, almost directly, of the democracy of the Fathers of the American Revolution.

Years went by and years went by for a half century and more after the foundation of this great Republic wherein freedom was proudly asserted and men were supposed to be free—but freedom was denied to twenty per cent of the inhabitants of these States. The negro had no rights which the white man was bound to consider or respect. Now, very often, those who are engaged in a war do not really know the whole substance of the war, do not fully comprehend what it is about. When Miltiades led that splendid charge down on the plains of Marathon and drove the Persians headlong into the marsh, the Greeks were fighting not simply for the freedom of Greece or of Athens, but for all Greek philosophy without which religion would not be what it is, or science or

learning-they were fighting for Greek art, whether in gold or ivory or marble or winged word, without which this life would not be much worth living—they were fighting against the autocrat and his system. A thousand years afterward, on the plains of Chalonssur-Marne, the Romans met the hordes of the Huns, under Attila, whom, under the name of Etzel, the Kaiser recommended as a model to his soldiers when about to depart for China (and I must say, they rather improved on the model— Genseric, King of the Vandals, the Kaiser seems to have adopted as his own model, for Genseric was a hypocrite and a liar, as well as a brute), these Roman soldiers did not know for what they were fighting. They supposed they were fighting in order that the Hun should not have Gaul, but they were in reality fighting to determine whether Europe, and, therefore, the world, should be Christian or pagan, civilized or savage.

When the Civil War broke out, a great many people did not know what its real meaning was—you will remember your great President, after whom this Hall has been named, to whom it is dedicated, and to whose memory it shall always be a fitting monument for generation after generation, was long willing that the erring sisters might come back into the Union; if they had done so, they would have been allowed to come back to the Union and retain their domestic institution at least for a time. Even to this day, many of my friends in the South contend and protest more vigorously and with transparent honesty that the Civil War (your late Governor said there was no Civil War but a Rebellion, but to avoid controversy I call it the Civil War) was not concerning slavery at all. It was a question of state rights, I have been told at

least a dozen times, by my friends in the South; but everybody knows, as was known before the war came to an end, that that war was about slavery, and that that war was waged that there should be real democracy in these United States, that a man's blood or his color should not make him the slave or the servant of another. It was, I think, in most cases, the recognition of that fact rather than the spirit of adventure or the desire of gain which induced fifty thousand young Canadians to offer their services in the Northern Armies. In that bitter conflict, when the hand of the soldier on either side was red with the blood of a brother, the sympathy of Canada was almost wholly with the North; and in the Mother Country, the Lancashire and Yorkshire operatives, suffering hunger and in many cases starvation, refused to allow their representatives in Parliament to protest against the blockade.

True, there was a class opposed to the North, but those who complain of the conduct of Britain during the Civil War, will do well to see how it was considered in the South!

The way of the transgressor is hard, but so is and more abundantly that of the neutral—if anyone doubts it, let him ask President Wilson!

And, in that great war for freedom, for civilization, for democracy, stood at the very front, that great man whom you commemorate today and to whom you dedicate this hall, Abraham Lincoln [applause]—Abraham Lincoln, sir, was the beau ideal of democracy. He was the first true, fully democratic President—democratic, indeed, with a small d, not a large one. [Laughter.] The distinction may be nice, but it is substantial. The first President,

George Washington, was an English gentleman, an aristocrat, a man who really loved the common people but in the same way the squire in England loves the common people on his estates; but he knew and they knew that they were not his people in the sense of being regarded as equals. The Adamses, both of them, were autocrats with but the faintest tinge of democracy in their make-up. Iefferson was a theoretical democrat: his democracy, sir, was of the type of the French Revolution. steeped to the lips in French philosophy and French democracy, a democracy which at that time, whatever it may be during the last few years, sir, had a fatal defect, had a fly in the ointment. No man can be a good democrat, unless he believes that all men are by blood the children of God, and he cannot believe that unless he believes that there is a God and that that God takes an interest in His children. [Applause.] We may pass over Madison, Monroe, Pierce, and persons of that class. General Jackson was a Democrat with a large D, it may be the father of Democracy with a large D. His conception of democracy was that "to the victors belong the spoils:" his conception of true democracy was, "If I can thrash you, I am going to do it," a democracy of the kind that is very rampant in some countries today. There is no other President who is worth mentioning in the same category, in any way near the same category as your great President Lincoln. Lincoln did not know the people in the same way as George Washington knew them, looking from above, down below. He did not know them in the same way as Jefferson knew them, individuals, units coming upon this world by chance and having no certain future beyond this world. He did not know them as

Jackson knew them, divided into two classes, one of which ought to have everything and the other ought to have nothing. He was born amongst them, he was one of them, and there never was a finer saying or one which better indicates the humanity of his heart than his saying, "God must love the common people; He has made so many of them." One of the common people himself, he loved them as his own: he loved them because he was one of them and knew them; and he loved them because he knew that the future of the world depends, not upon King or Kaiser or philosopher or man of high station, but upon the common man. I say to you, that Lincoln, whom you celebrate today, is the greatest democrat the world has ever seen, in the true sense of the world. [Applause.]

The United States by its heroic sacrifice of men and money, pouring out its blood and gold like water in that magnificent struggle well earned the position of leader in the world's democracy.

Then came these later days—in the summer of 1914, the peace of the world was broken by the clash of arms. Britain and the other democratic nations tried hard to keep the peace, but certain of the autocratic nations felt that the time had come when they could have what they wanted; and war was declared. Even then, Britain, divided from Europe by the Channel, might have remained out of the war; but she had pledged her word, and when another nation which had also pledged its word made that tiger spring across the boundary of Belgium and flew at the innocent, ravaged, killed and destroyed, the great and generous heart of Britain, hating war, loving peace leaped within her bosom; she declared war, and Canada, her fairest, most beautiful daughter, hesitated

not one moment, but sent the message across the sea to the great Mother, "Our last dollar and our last man." [Applause.] Canada has given nearly 450,000 volunteers to the cause, a number corresponding to over 6,000,000 in the United States; there are 30,000 young Canadian boys whose tombs we know in France and Flanders, and 5,000 more, buried, we know not where, whether blown to pieces or buried in the trenches—35,000 men of our best and bravest and noblest are dead. I come from a city of 450,000 inhabitants, and she has sent 60,000 men under arms; she mourns more than 3,000 dead. My University of Toronto has nearly 5,000 graduates and undergraduates fighting for civilization; 300 have made the last sacrifice. We refuse to repent; we have done right.

Gentlemen, when we were fighting, we looked across the international boundary for leadership and sympathy; but we received none officially. We fought on and on; our boys have shown what Canadian lads could do and we are proud of them, yes, and, you are proud of them, for they are looked upon as your very own; they are to you almost American boys, born though they were, north of the international line.

Those of us who knew the American people, as I thought I did, were puzzled. It almost seemed that they had for the time being abdicated their well-won leadership. We heard a great deal in official circles of peace without victory, of neutrality even in thought and of struggles in which the United States had no interest. We heard nothing officially of democracy, of truth and honor of fidelity to the pledged word, of Christianity, or humanity. But, we saw the carpet inside out. We did

not see the pattern which the ingenious workman behind the screen was with marvelous skill weaving out, thread by thread and shuttle by shuttle until at last, sir, in April of this year, it flashed upon us like a vision, the splendid work of the President of the United States, that you should go into the war, not a divided nation, but a nation unanimous, united in soul in a passionate and insistent demand for justice and right—a demand by the whole nation and not by a section of it only. Before, we saw the carpet inside out; we see the right side now; and, thank God for that great pattern which, in the Providence of God, your President has worked out, in view of the whole world—the American nation, one and undivided in an insistent demand for justice and righteousness.

Now, as I suggested before, the occasion and the cause of wars are two different things entirely. Aristotle said with keen insight—than whom no greater philosopher lived, a writer to be read and read and read again—he said that "Occasions of war may be small and manifest, the causes of war are great and obscure." The occasion for Britain going to war was the brutal invasion of Belgium: the occasion for the United States going to war was the brutal invasion of neutral rights on the sea and the breaking of a promise on the part of the Germans. America had no call to go into this war so far as her financial position was concerned; she had no treaty to keep, no pledge to implement, no trade to seek, there was no territory which she desired. She hated war; she desired to keep out of war and tried hard to be neutral in act and word, if not in thought ("neutrality in thought" I never understood, unless it means negation of all thought, which is the easiest of all virtues, and the most universally practised). She tried hard to be neutral, and after the horrors of Belgium on land were paralleled on the sea, when the Lusitania was sunk and the corpses of American men and women, women, and, God help us, American babies dotted the ocean, even then, America said, "I will hold my hand: I shall not go to war unless absolutely necessary," and hoped against hope. She received another promise, a promise made to be broken. As the nations of Europe knew in their hearts that the swashbuckling ruffian would some time or other break out in war upon beautiful Europe, but hoped against hope, because the wish was father to the thought, that war might be kept off for some years—so, the United States knew in its heart that the promise made by Germany would be broken whenever it seemed convenient to Germany. And it was broken; and then at last the flame of indignation broke out and this great people found themselves at war for justice and right, for international law and international decency.

But, had Belgium never been invaded, had the U-boat never been invented or if invented never used as a weapon of wholesale murder, a war of this kind must necessarily take place. This, my friends, is a phase, the most terrible phase—I pray to God it may be the last phase—of that eternal struggle which began before Lucifer fell from Heaven, and will continue till the day when He maketh up His jewels. A war between right and wrong, a war between our God and the German Woden; a war between our Christ and the bloodthirsty gods of the German nation; the struggle of Bethlehem and Galilee and Calvary with Potsdam and Berlin and Vienna.

There are only two systems of government, either government by the people or government over the people; and it makes no difference whether that government over the people is by an individual or a caste or a class. so long as the power is not given by the people but is exercised in their despite. In autocracy, the autocrat, filled with the sense of his own greatness, believes he is sent of God to govern over the nation; and his people, if they take him at his word, necessarily believe that they are favored above all the other peoples on the earth. They do not believe, with the Apostle, that God hath made of one blood all nations of men for to dwell on all the face of the earth. They believe their nation is separate and distinct. In medieval times it used to be said, "Keep no faith with infidels;" during the times of slavery it often happened that slave dealers and owners would keep no faith with the slave, and too often it was not thought dishonorable to break faith with the Indians; vet these promise-breakers would keep their word pledged to an equal. My friends, as was said by your great President with that keen vision which can come only from a profound, accurate and philosophical study of historyan autocrat cannot be trusted to keep faith. An autocrat is of necessity a liar ex officio.

A free government, government by the people, is a different kind of government entirely,—it is a government of equality, a government of righteousness.

As has been said so often there are only two rules of international conduct worth considering. One is "Might makes right: Might is right; I can, therefore I ought and will." That is the rule of the autocrat. The other is, "Right is right; and because right is right to follow right

were wisdom in the scorn of consequence." This is the rule which has kept our two nations in harmony, in peace for over a hundred years.

Democratic nations are willing to do the right: they believe that other nations have rights which they are bound to respect. The autocrat necessarily believes that he is sent by God and that any opposition to him must be blasphemy: and as might is best shown in war, the theory naturally arises that war is good in itself. If we have a nation or a number of nations who hold the theory that might is right, the time must come when these nations shall put that theory into force. It may be, for years, generations, centuries, in preparation; and the time may not come speedily; but the time will come when these nations will believe they are in a position to impose their will upon the other nations, and unless the other nations lie down, war is sure to come.

"Surely we come of the blood, slower to bless than to ban, And little used to lie down at the bidding of any man."

If you have an autocratic nation like Germany, a democratic nation which will not lie down, like Britain and the United States, war is necessary and unavoidable. If there never had been a Belgium, a Lusitania or a U-boat, this war at some time must needs have come. The battlefield, the battle line, at some time must needs be set; and thank God it is set with the democratic nations standing shoulder to shoulder. Now will be drowned out that feeling of jealousy, even hatred, which has arisen between these great English-speaking nations through the unwise actions of those on each side of the Atlantic and each side of the international boundary—now we shall have together and united these great flags of the red, the

white and the blue, the same colors, but differently arranged, floating side by side as they are in the trenches of France and Flanders, floating together not only on the fields of battle, but on the fields of peace, not only this year and next year, but the next century, the next millennium, and, please God, until time shall be no more. For, my friends,

In precious blood its red is dyed,
Its white is honor's sign,
In weal or ruth its blue is truth,
Its might the power divine.

and, please God, those flags shall never again fly in opposing camps, but will float as they do today side by side in the greatest of all causes.

Now, it would be amusing if it were not so terrible, to contemplate the trial balloons which are sent out by the German looking towards peace; he thinks to "bless himself in his heart, saying—surely I shall have peace though I walk in the imagination of mine heart." There is no peace that the Allies can accept, can dare to accept. except the peace which kisses righteousness, for "the work of righteousness shall be peace, and the effect of righteousness, quietness and assurance forever." We must, notwithstanding these trial balloons and the vain hope of peace, fight on and on and on until there is a military victory, until the brute is tamed. The brute must be brutally beaten; that is the only logic he understands. [Applause] The world must be made safe for democracy; and it can be safe for democracy only when the autocrat finds that democracy is too strong for him and war does not pay. We are fighting, you and I, your people and mine—I will say no more "your people

and mine," but your and my people, our people, because they are the same people—our people must fight on and on and on until victory is obtained; and in doing that we are not fighting, sir, against the Germans, we are fighting not only for Britain, Canada, the United States, but for Germany and the Germans. We hope that they are not sinning against the light, but that they are mistaken and misled, and we hope that they may soon come to see the light. If they are sinning against the light, then we hope they may experience a change of heart and repent in sackcloth and ashes, and become a new people. Then, when they have determined to become a new people, the infinite capacity for taking pains, the marvelous industry, the diligence, the discipline, the patriotism, and the national feeling of the German, will necessarily make Germany again great, but great in another sense: a great nation loved and respected, and not loathed and dreaded by the rest of the world, not hated and feared as she is today. The great tragedy, my friends, in this war, is not the death of so many people—they would have died anyway at some time—the tragedy of this war is not so much the destruction of material wealth-that would have gone, that is something a man cannot take with him when he goes the long journey—but the tragedy of this war is the self-disclosure of Germany, Germany showing her true heart to the world; when that heart is changed, and a new and better because democratic Germany is come, the world will be changed, and then will be seen upon this earth what the poet saw in Heaven.

> "I dreamt that overhead I saw in twilight grey The Army of the Dead Marching upon its way,

So still and passionless, With faces so serene, That scarcely could one guess Such men in war had been.

"No mark of hurt they bore, Nor smoke, nor bloody stain; Nor suffered any more Famine, fatigue or pain; Nor any lust of hate Now lingered in their eyes— Who have fulfilled their fate, Have lost all enmities.

"A new and greater pride
So quenched the pride of race
That foes marched side by side
Who once fought face to face.
That ghostly army's plan
Knows but one race, one rod—
All nations there are Man,
And the one King is God.

"No longer on their ears
The Bugle's summons falls;
Beyond these tangles spheres
The Archangel's trumpet calls;
And by that trumpet led
Far up the exalted sky,
The Army of the Dead
Goes by, and still goes by.

"Look upward, standing mute; Salute!"*

[Applause.]

HON. HAMPTON L. CARSON:—I move that the thanks of The Union League be extended to Mr. Justice Riddell for his profound, eloquent and inspiring address.

[Motion unanimously carried.]

^{*}These beautiful lines by Barry Pain I make no excuse for repeating. I have recited them before on similar occasions, and repeat them at the request of one in whose judgment I have profound confidence.—W. R. R.

MR. GRIBBEL:—Mr. Justice Riddell, allow me to thank you in the name of The Union League.

MR. RIDDELL:—Mr. Chairman and gentlemen, I brought with me a manuscript here, but I could not read it. When I saw that flag (pointing to the Canadian flag, the British flag with the Canadian arms in the fly) flying opposite your own flag and when I saw your kindly faces looking up in mine, I could not read it. I have spoken to you from my heart. God bless you; God bless The Union League. [Great applause, audience rising.]

EDWIN S. STUART:-I have been asked by the Art Association of The Union League to say a few words upon this, the fifty-fifth anniversary of Founders' Day. This beautiful room in which we are assembled, visible to us now for the first time, has been created by The Union League as a perpetual memorial to those who offered their services to their country during the great crisis of 1861-1865. It has been aptly called the Hall of Fame. But let me urge vou never to regard it as a mausoleum. The men whose names look down upon us from these walls, still speak through their lives and their deeds. There is another title that, I think, might, very fittingly, be applied to this room. It might well be called "Temple of Inspiration," because in it we have, in its beauty and purpose, an addition to this building, that appeals with striking force to all those noble principles that The Union League represents. Here, in enduring bronze, are the names of every member of The Union League living or dead, whether officer or private soldier, who offered his services in defense of his country. Every name appears before you. The Union League has

existed for fifty-five years, and were it not for the high, unselfish and patriotic sentiments and ideals that give it birth and still inspire it, it would not have survived to celebrate this anniversary. Any member of The Union League who does not understand, if such there be, that this is a federation of men formed to accomplish exalted aims and purposes does not know what was back of it at its foundation and what it should stand for today. This room-call it "Hall of Fame," or "Temple of Inspiration" or by any other appropriate name-will remain as a lasting testimony and proof to our successors through the years that are to come of the pure and lofty motives of the founders. At the present time, our country is facing what is perhaps the gravest crisis in the history of the Republic. We should be fully awake to the situation; because it is not a time for idle talk, reckless or hysterical statements, unjust or unfair criticism; but it is emphatically a time for every man, for every American citizen, whether he be such by birth or adoption, absolutely and unreservedly to support the President of this nation in every effort made to maintain the honor, integrity and safety of the United States of America. [Applause.]

After the President delivered his address to Congress leading to the declaration of war against Germany, The Union League was the first organization to respond and offer its services, and what it did in the past for President Lincoln, it will do for President Wilson. [Applause.] Our flag is now carried at the head of our troops somewhere in France; let us remember this glorious truth, and let us impress it upon the mind of every American, now and always; that flag has never been carried in an

unjust cause, and has never been unfurled except for the benefit of mankind, therefore it has never gone down in defeat. [Applause.]

The Art Association of The Union League felt that this room would not be perfect, and would not be adequately adorned for presentation to the League, unless it were truly a memorial room. It was believed that it would be a Temple of Inspiration when embellished with the names of the men you see here, and hallowed by the statue of the man whom they upheld and sustained, and whose ideals brought this League into being. And as I look upon this statue of Lincoln, there comes to my mind a remembrance of that great, strong, patriotic spirit who stood at his right hand, invincible through his confidence in the justness of his cause, Edwin M. Stanton, Secretary of War: and I recall the words, prophetic in the light that followed, that fell from his lips, as he stood at the deathbed of Lincoln and gazed at his lifeless body, undaunted in spirit, but bent with grief: "Now he belongs to the Ages!" That utterance has been amply verified, for now, fifty and two years after Stanton thus gave expression to his reverence and sorrow, the memory of Lincoln's life and deeds remains firmly imbedded in the affection and respect of the entire world. All over the earth, wherever the peoples thereof enjoy liberty or are fighting to win it, Lincoln is venerated as are the prophets of old. If any of the younger members of the League should ever be asked what inspired its foundation, let them bring the questioner to this room, and facing this statue and the names around it exclaim: "This is what inspired it!" Around and about this statue are the names of all members of The Union League who rallied to the defense of

their country. The great majority have gone before but there are many survivors and they have the supreme satisfaction of reading their names upon the tablets. are veterans of the Rebellion, members of The Union League, here tonight, who saw, and talked with Lincoln, the Great Emancipator; and it seems peculiarly appropriate that, on this occasion, there are among us, two men who were at Lincoln's side at the Battle of Fort Stevens. on the Seventh Street Road near the City of Washington. They stood with him on the parapet of the fort on the only occasion when a President of the United States was under fire in actual battle while in office. The other officer in the group was wounded so severely that he carried its serious effects to his grave, though he survived many years.* The two members of the League who were with Lincoln in battle are Colonel James W. Latta and Major William A. Wiedersheim.

I see around me, as I have said, veterans of the War of the Rebellion whose active work is done. I see also many young men—strong, active, full of fire and courage—in the uniforms of the Army and Navy of the United States who are going to fight to preserve the very same principles for which these veterans fought and for which Lincoln died—Liberty and Democracy. These young men are to take up and carry on the work of their predecessors, and care must be taken that the names of every member of the League who fights to perpetuate the achievements of the heroes of 1861–1865 shall be added to those we now see here. Whenever I look upon a picture of Abraham Lincoln, I think: There is a man who

^{*}C. C. V. Crawford, Assistant Surgeon, 102d Pennsylvania Volunteers.

had no hate in his entire nature. No act of his was ever dictated by hate; his nature was love. Hate never won any cause. In this war it has driven our enemies to the commission of unutterable atrocities, the murder and outrage of innocent women and children; it has instigated them to break treaties and agreements and violate the laws of nations—but it has never won a cause. And I want to say tonight, that just as surely as I am standing here, hate won't win the fight upon which we have entered.

And now, in the name of, and on behalf of, the Art Association I present to The Union League this statue of Abraham Lincoln. This room would be incomplete without it. And as the years pass, and younger men take our places—the places of you and of me—let them see to it, that when this war is over, there be placed here the names of the members of The Union League who made sacrifices and fought over seas for the cause that Abraham Lincoln fought for-the freedom of humanity. For that cause Abraham Lincoln died; and for it every American today, whether on the battlefront or in his own country, will be willing to sacrifice everything in order to win the fight and secure the triumph of democracy. [Applause.] For, as the President has said: "This war means grim business." It is not a holiday affair; not a mere parade with flags flying and bands playing. It is real war upon an unprecedented scale. America expects every man to make a sacrifice. There is a call to universal service in this stupendous effort to establish for all futurity the principles upon which the American Republic was founded. This will be the final struggle to settle permanently the rights of our own people and of the

peoples of the world—the weak as well as the strong—to enjoy unmolested the freedom of conscience, aspiration and action that God intended should be the natural and inalienable prerogatives of mankind. And after the victory is won the man who did not contribute his share to the triumph of so holy a cause will be unhappy indeed.

Mr. Gribbel:—The statue will be unveiled by the patriotic saint of The Union League, Mr. George P. Morgan. [Applause.]

MR. G. P. MORGAN:-Mr. President, and gentlemen, it is pleasant to be here, but I am here in the place of one of our members, dear to every member of The Union League, who has been sorely stricken, and to whom our hearts go out in sincere sympathy. General Benson gave much time and much thought to the preparation of these memorials, both as a member of the Board of Directors and as chairman of the Committee, arranged and prepared the list of names entitled to be placed on this roll of honor. This motto of this great organization is identical to that of the great modern President, "Love of Country Leads." How many memories I recall as we read the names on these tablets. statue and these inscriptions make this holy ground; make this an epoch night in the history of The Union League.

We are assembled this evening to unveil a statue in lasting bronze, of the greatest American, whose one aim was to preserve the Union, and we have surrounded it with these tablets recording the names of our members, dead and living, who tendered their lives, if need be, for their country in that great conflict which was to decide

whether this country was to remain as a Union of States or to be destroyed.

It is fitting that The Union League should do this. Its walls have been engrossed with this motto. This monument of Abraham Lincoln is of the patriot who by the grace of God lived to see victory for the cause and then fell at the hands of a cowardly assassin within forty days after the second inaugural. These words will remain forever enshrined in the hearts of every true American. The success for which he strove has made it possible for the United States to take part today in this war for humanity against barbarism and has placed them clearly in the front rank of the on-marching columns.

MR. GRIBBEL:—Governor Stuart, for and on behalf of The Union League, with profound appreciation, I accept this statue. Through the continuing generosity and sound judgment of the Art Association this house has been enriched with a notable line of art treasures. In the gift of this statue you have touched the heart-strings of The Union League and have made our patriotism articulate by this superb portrait of him whose service was the inspiration of our birth. Here this statue shall stand for the generations to come as the sign and symbol of our mission and our enduring ideal. For it we, and those who shall come after us, will hold for the Art Association an endearing gratitude.

Members of The Union League, we gather to set apart this room as sacred to the memory of those of our members, who in the dark days of 1861 to 1865 sprang to the defense of the Flag. On these tablets their names and rank are spread in bronze, not so imperishable as the glory of their accomplishment. Their victory in 1865 makes possible the raising of the Flag of Liberty and Union by these United States in the battle for world freedom in 1917.

Most of these whose sacrifices we honor have joined the battalions of Heaven, receiving the eternal decoration; for "Greater love hath no man than this that a man lay down his life for his friend," but by the favor of a benign Providence there gather in this company tonight:

William W. Allen

Silas H. Alleman

Charles D. Barney

Jacob E. Barr

Clarence S. Bement

R. Dale Benson

Oliver C. Bosbyshell

Wendell P. Bowman

F. Amedee Bregy

Henry W. Brown

Henry C. Butcher

Howard Butcher

James Butterworth

Charles C. Butterworth

Richard Campion

William H. Carpenter

Robert Carson

J. Solis Cohen

John Conaway

Theodore Cramp

George K. Crozer

Henry J. Davis

A. J. DeCamp

Henry S. Huidekoper

Lane S. Hart

Samuel Horner, Jr.

John B. Hutchinson

Jacob E. Hyneman

John Story Jenks

Theodore Justice

Daniel A. Keyes

Josiah Kisterbock, Jr.

James W. Latta

James G. Leiper

Richard T. McCarter

Robert K. McNeely

Frederick McOwen

George V. Massey

Samuel Moore, Jr.

George P. Morgan

C. Stuart Patterson

George G. Pierie

William K. Ramborger

William H. Ramsey

George Rice

Samuel D. Risley

Edward J. Durban Edgar W. Earle

Albert D. Fell

David N. Fell

John O. Foering

James Forney

Edward H. Godshalk

William Grange

Robert M. Green

John W. Hampton

William W. Hanna

Charles H. Harding

John B. Harper

Alfred C. Harrison

Thomas S. Harrison

Frank H. Rosengarten

William H. Sayen

Samuel S. Sharp

Richard M. Shoemaker

Powell Stackhouse

Thomas C. Stellwagen

George Stevenson

John M. Walton

Joseph K. Weaver

John A. Wiedersheim

Willaim A. Wiedersheim

John Willing

Robert N. Willson

John S. Wise

John D. Williamson

whose names these tablets bear.

Your Board of Directors in 1915 appointed as a committee of veterans of the War of the Rebellion and requested them to report a list of members who had served in the armed forces of the United States in the War of the Rebellion.

R. Dale Benson, Chairman

George P. Morgan

H. S. Huidekoper

O. C. Bosbyshell

Horace Neide

Theodore E. Wiedersheim

C. Stuart Patterson

James W. Latta

Richard T. McCarter

To these veterans, by their request, was added Colonel L. E. Beitler, as Secretary. The magnitude of the task was not appreciated when it was imposed upon this committee.

General Horace Neide and General Theodore E. Wiedersheim passed to their reward before the task was

finished, and General R. Dale Benson lies ill tonight, unable to be with us. The records of over fifty years were searched and tonight we have as the result of this committee's devotion these authenticated tablet records. Amid all the records of The Union League these names are our most precious assets. Stripped of them and the inspiration of their example and sacrifice, we should be poor indeed.

Five honorary members of The Union League, whose names appear upon these tablets:

General Philip H. Sheridan,

Major-General Oliver Otis Howard,

Brevet Major-General Galusha Pennypacker,

Admiral George Dewey,

Rear Admiral J. A. Winslow,

received the "Thanks of Congress for distinguished service."

On these tablets are also the names of-

Brevet Major-General John F. Hartranft,

Lt.-Colonel Charles M. Betts,

Brevet Brig.-General Henry H. Bingham,

Brevet Major-General Charles H. T. Collis,

Brevet Major William H. Lambert,

Brevet Major-General George W. Mindil,

(Medal awarded twice)

Brevet Major-General St. Clair A. Mulholland,

Colonel Robert L. Orr,

Colonel Henry S. Huidekoper,

Captain Frank Furness,

who received "The Medal of Honor."

Colonel Henry S. Huidekoper, the last surviving Field

Officer of the Third Division of the First Corps of the Army of the Potomac, is still with us in health and strength.

Major Lane S. Hart and Major O. C. Bosbyshell, the only surviving members of The Union League who were with their regiments in the battle and explosion of the mine at Petersburg in 1864, are among our number tonight. Major Bosbyshell was the first soldier who was wounded in the War of the Rebellion, having been struck on the head in Pratt Street in Baltimore on the 18th of April, 1861. We rejoice it left no permanent damage either to his head or to his heart.

As Governor Stuart has said, two living members of The Union League, whose names are inscribed on these tablets, stood in the presence of President Lincoln when he was under fire in the siege of Fort Stevens during the rebel raid at Washington in 1864, and none are held in higher regard here than these:

Colonel James W. Latta, Major William A. Wiedersheim.

The Union League is rich also in having among its living possessions the only surviving member of the League, Captain John O. Foering, who, after participating in all the campaigns of the Army of the Potomac up to Gettysburg, marched with Sherman to the sea and later through the Carolinas to the final surrender of the Confederacy.

Another unique characteristic of these Memorial Tablets should be called to your attention. It is a distinction not granted to any other organization in the country, namely, that these tablets bear the names of

fifty-two members of the Philadelphia Washington Greys.

Devoutly do we pray that down the corridors of this Union League house there shall follow us generations of members, whose one and only object of membership here shall be to secure to their children, undiminished, our own birthright of Representative Government under the Constitution received by us from the Fathers.

To this end we dedicate this Memorial Room, this our Hall of Fame, as the shrine of an enduring Love of Country.

As Abraham Lincoln was supported in the flesh and spirit by Grant, Sherman, Sheridan, Hancock, Meade, Thomas, Gregg, Farragut, and these our members, it is very fitting that in this Memorial Room these bronzes in their positions shall proclaim the historic fact.

This dedication we make while we here re-dedicate ourselves and this Union League to the support of the President of the United States in the present war in the spirit of the immortal words carved above the Memorial Tablets that "Government of the people, by the people, for the people shall not perish from the earth."

Gentlemen, as an illustration of the influence of this memorial room allow me to submit to you a very signal proof. That influence of your patriotism reinforcing the history of the past fifty-five years and the courtesies that have been extended by you to those who have gone before you, down through the years have made such a deep impression upon a patriot still at work in the city of Washington that he writes me a letter and sends to The Union League the most treasured possession he and his family own. Let me read the letter:

Washington, D. C., November 19, 1917.

To the President and Board of Directors of

The Union League of Philadelphia,

Philadelphia, Pa.

GENTLEMEN:—My attention has been called to the fact that The Union League is, on the 24th instant, dedicating its "Memorial Room" and unveiling a life-size Statue of Abraham Lincoln. I understand that the new Room is to contain the League's Lincolniana.

I am under the impression, though I am not sure, that I am the only survivor of those who on the morning of the 15th of April, 1865, saw that greatest of all Americans draw his last breath. The circumstances under which I was drawn into the scene are fully portrayed in the final chapter of a little publication called "The Commander's Year," which I send herewith and beg your acceptance of. The shorthand notes of the evidence I took before Secretary Stanton and Chief Justice David K. Carter, then of the Supreme Court of the District of Columbia, in the rear parlor of the Peterson House, I transcribed into longhand while yet sitting in the room where the evidence was taken. I had an idea that I would like to preserve not only the shorthand notes but the original transcription made under such dread surroundings and I did so, giving to Secretary Stanton the next afternoon another copy of the evidence in longhand.

My son, Mr. James A. Tanner, residing in your city now, put them into shape for permanent preservation and, believing that they are of considerable interest to the general public owing to the circumstances surrounding their creation and believing that they will become more so as the years pass, I write to say that if you care to give the volume a place among the treasures you may now possess or may naturally gather in the future regarding President Lincoln, I shall be glad to present them to you in perpetuity, limited only to the life of The Union League. If the League should ever discontinue its Lincolniana display or sever its official connection therewith, I would like to have it understood that the testimony shall be returned to my heirs.

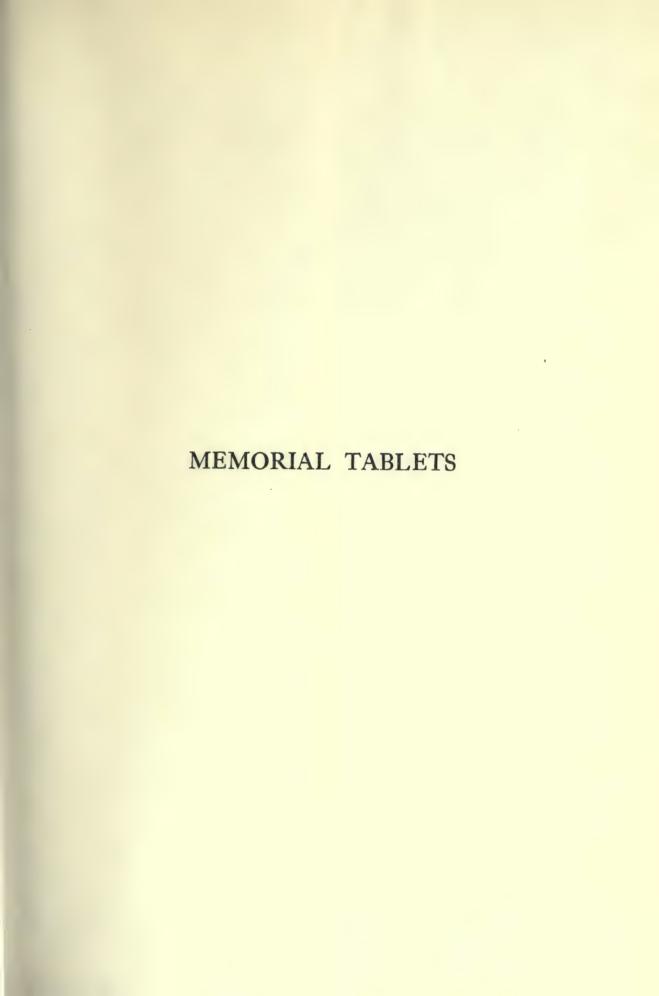
I am delighted to know of your project and, remembering with pleasure the many courtesies I have had at the hands of your organization and its individual members, I make this proffer with great pleasure and with no further object in view than the hope I have that it may add somewhat to the interest taken in your collection.

I am, gentlemen, with great regard, Your obedient servant,

(Signed) JAMES TANNER.

And into our possession as a trust, gentlemen, has come this volume. There are the original stenographic notes that Corporal Tanner made in the parlor while Lincoln was dying overhead; and the transcript of the notes in his own handwriting which he made the same night in the same house.

[Adjourned.]







HONORARY MEMBERS

PHILIP H SHERIDAN

IDHN A VIKSLOW

BENJAMIN HARRISON

WILLIAM MKINLEY

GEORGE DEWEY

JOHN R BROOKE

OLIVER OTIS HOWARD

DAVID M MURTRIE GREGO

GALUSHA FENNYPACKER

GOVERNORS OF PENNSYLVANIA

JOHN WHITE GEARY

OHN PREDERIC HARTRANET

HENRY MARTYN HOYT

IAMES ADDAMS BEAVER

SAMUEL WHITTAKER PENNYPACKER

SHRIVE ACKLEY

D. AND ABBIERS

LANKS AGNEW

MANUEL M ALBERTSON

MLAS ALDRICH

ALLEN

JUHN WA ALLEY

CALLYNAW VETER

W.P. ALLEN

HEAS HONACH ALLEMAN

ALTEMUS ALTEMUS

CIPILANO ANDRADI THEODORIE ARABITHONG

RICHARD LEWIS ASHHURST JUIN THOMAS ALIDENRIED LUVARD BALLEY LUCE W BAILEY SAMUEL E BAILY CHARLES HENRY BANES GEORGE W BANKS JUHN PALMER HANKSON WHARTON BARKER

CHARLES D BARNEY

ENOS REESER ARTMAN

JOSEPH ASHBROOK

MYER ASCH

LACOL EBY BAID. LAMES BARBATT 1. HENRY W BARTOL LEVIS D BAUGE DIVITT C BANGE HAR BURN DISIDA I LOWINE BELL SAMUEL BELL CLARENCE S REMENT WILLIAM BURNING JAMES M. BENNETT EDWIN NORTH BENSON PRANK C BENSON R. DALE DENSON GEORGE A BARNARD CHARLES M BETTS ALEXANDER BIDDLE JOHN BIGELOW HENRY H BINGHAM AMES T BINGHAM HORACE BINNET I WILLIAM C BIRD JUHN FRANK BLACK WILLIAM BLACKBURNE WILLIAM BLANCHARD JOHN O CARPENTER JOHN BLAKELEY JOHN BLAKISTON ROBERT L BODINE OLIVER C BOSBYEHELL EDWARD M BOTLE EDWARD R BOWEN WENDELL P BOWMAN DAVID BRANSON IOSEPH H BRAZIER JOHN E BREADT FAMEDEE BREGY

DAMES OF VINCON TANK THURSE HUNTER BROOKE LAMES C IMODICS Provide Market Harris March Al MANUEL DESIGNATION OF THE PROPERTY OF THE PROP HAHLON BRIAN Lit I's remedies that HOWARD BUTCHER CINE CHILDING AND SO TAMES BUTTERGOLDEN JOHN MORRIS BUTLES GEORGE CADAWALATIES HENRY L CAKE WILLIAM CAMAC WILLIAM H CAMPBELL IAMES D CAMPBELL RICHARD CAMPION NICHARD R CAMPUS EMLEN N CARPENTE JAMES E CARPENTUR LOUIS H CARPENTED WILLIAM E CARPENTER ROBERT CARSON ANDREW C CATTEL HAPET E CAVENAL adolph f cayada EDWARD E CHAM DWIN TYOUNGE CHARLES CHIPMAN CALEB CHURCHMAN IAMES R CLAGHORN





JOHN ROSS CLARK

HENRY C COCHRANE HAMILTON DISERVI LACOB SOLIS COHEN

ALDS P COLESPERRY

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JOHN F CONAWAY

LAY COOKE IN THOMAS COOPER

THOMAS V COOPER

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CHARLES H COXE

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WILLIAM E C COXE CHARLES I CRAGIN

THEODORE CRAMP

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ALPEND DEVENDUE OH, H DEVICTOR

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HENRY E GOODMAN

JOSEPH E GOODMAN

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CHARLES H GRAEFF

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CHARLES SHIEL GREEN!

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EDGAR M GREGORY

EDWARD BURD CHURN

IYWEI UMAN HENRY & GUMMEY

VILLIAM T GUMMEY

HANSON H HAINLS

IOHN W HAMPTON ELISHA A HANCOCK

WILLIAM W HANNA HUNN HANSON

WILLIAM W HANSON ISAAC D HARBERT

CHARLES H HARDING

IAMES HARPER

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WASHINGTON H GILPIN WA JAMISON HARVEY

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SAMUEL B HAUFT

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JOSEPH G RENDERENCOM

CHARLES SHINGIMAN

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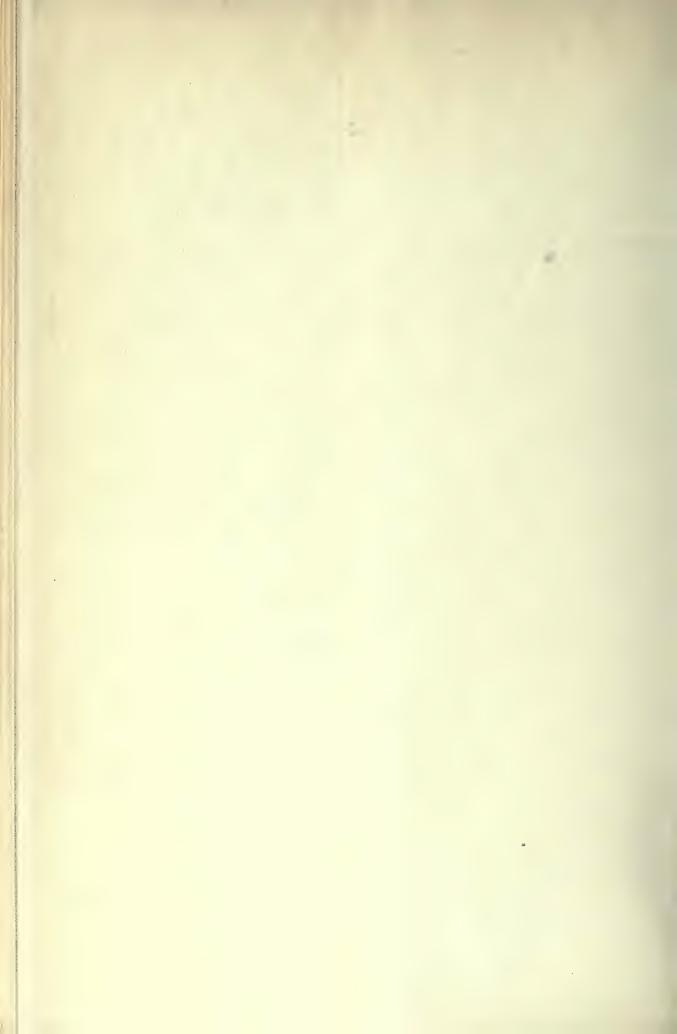
SAMUEL HORNER J.

HUGH B HOUSTON

PRANCIS A HOWARD WILLIAM HOWELL I.

SAMUEL B HUEY

GEORGE F HUFT HENRY'S HUIDEKONIE









MAGNA CARTA

AN ADDRESS

DELIVERED BY

WILLIAM RENWICK RIDDELL, LL.D., F. R. Hist. Soc.,

Justice of the Supreme Court of Ontario.

BEFORE

THE LAW ACADEMY OF PHILADELPHIA

May 3, 1917







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1917

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MAGNA CARTA

BY

WILLIAM RENWICK RIDDELL, LL.D., F. R. Hist. Soc.,

Justice of the Supreme Court of Ontario.

PROËM

In the year of Grace, twelve hundred and fifteen, there was gathered in the Meadow of Runnymede by the Thames between Staines and Windsor, a "Congress into an extraordinary session because there" were "serious, very serious, choices to be made and made immediately."

It was still (even in England) the time of "the old unhappy days when the people were nowhere consulted by their rulers": an autocratic King claiming to rule by Right Divine and not by the consent of the governed, whose acts were based "only in the selfish designs of a Government that did what it pleased," had contemptuously disregarded the ancient rights of his people, had repeatedly for his own interest and that of "little groups of ambitious (and greedy) men who were accustomed to use their fellow men as pawns and tools," "put aside all restraints of law and of humanity," had violated the law which "by painful stage after stage" had "been built up with meagre enough results indeed after all was accomplished that could be accomplished, but always with a view," more or less clear, "of what the heart and conscience of mankind demanded."

Occasionally and for a time "in the progress of the cruel and unmanly business * * * , a certain degree of restraint was observed"; but the king had gone from bad to worse, "the new policy * * swept every restriction aside" and the Government had "thrown aside all considerations of humanity and right," "put aside all restraints of law or of humanity."

The Barons of England with the higher Clergy had the choice to submit or to resist, if need be to fight -the choice was unhesitating-"We will not choose the path of submission and suffer the most sacred rights of our nation and our people to be ignored or violated"—"we are * * of the champions of the rights of mankind"-"the wrongs against which we now array ourselves are not common wrongs; they cut to the very root of human life" and all that makes life worth living. "Our object * is to vindicate iustice against selfish and autocratic power and henceforth insure the observance of" that principle; "we are now about to accept gage of battle with this natural foe of liberty, and shall if necessary spend the whole force of the nation to check and nullify its pretensions and its power;" "our motive will not be revenge or the victorious assertion of the physical might of the nation but only the vindication of right, of human right."

By bitter experience they knew that "no autocratic Government could be trusted to keep faith * * or observe its covenants," could be a partner in "a league of honor"—broken faith had proved to them that they must be prepared to enter upon war, that they might be "forced into it because there" was "no other means of defending" their rights. They knew, too, that there were very many foreigners within their country, brought in and supported by their foe, that the king in his autocratic Government was "backed by organized force which" was "wholly controlled by" his "will not by the will of the people." But they felt that "right was more precious than peace"; and notwithstanding that there might be "many months of fiery trial and sacrifice ahead," they mustered their forces and marched to Runnymede, dedicating to their task their lives and their fortunes, everything that they had, and defying the "lawless and malignant few" who would for their own non-patriotic reasons, support the lawless and tyrannical violator of right.

God helping them, they could do no other.

What they did is embodied in Magna Carta, the great Charter of the liberties and rights of all English speaking peoples and powerful in its influence, direct or indirect, in establishing our conceptions of liberty and right throughout the world.

Nearly seven hundred and two years after that memorable Congress, another Congress met in a city upon a continent unknown to, undreamt of by John and his Barons, to consider the acts of a World-criminal. The results of the work of that Congress are as yet in great measure hidden in the womb of time; but who may doubt that the principles inherent in Magna Carta will, through the efforts and the sacrifices of those who are saturated with its spirit—Americans,

thank God, taking their full share—triumph in world affairs and international law as in affairs and law between man and man?

We Canadians, joint heritors of the Great Charter, joyously and exultantly welcome our American brethren to the mighty, the last struggle for democracy, for international justice, right and good faith, the Armageddon of all the ages, the glory and the pride of our peoples who as they live so would they die for "whatsoever things are honest, whatsoever things are just, whatsoever things are of good report." We know that we are one with you in all that is worth while and are as one prepared together to do all and sacrifice all for our ideals of right and democracy.

I am now to speak of that Scrap of Paper we call

"MAGNA CARTA"1 *

"Whatever Magna Carta may be in law, whether a treaty between king and subjects, a charter or grant from the king, a declaration of rights, a constitution, a statute or what not, it is also a long and miscellaneous code of laws." ²

And this code of laws has been appealed to in all succeeding generations in England and her Colonies as assuring their dearest rights. Sometimes, indeed, it has been the subject of rude and coarse jibe—the great Cromwell despised or affected to despise Magna Carta, and Chief Justice Kelyng did not hesitate to imitate him. ³ Cromwell, however, was at the time

^{*} Numerals refer to the notes attached at the end of the text.

indifferent to, as he was above, all law; and Kelyng's life and conduct were at all times a scandal to the King he served and to the law he was supposed to administer.

In most instances, the mention of Magna Carta was received with respect and even reverence; and to this day there are no English speaking peoples who do not take pride in it.

Much of it has been repealed, much has become obsolete even in England, much never was applicable to a new country like one of the Thirteen Colonies or Canada; but the spirit of that wondrous document lives wherever our freedom exists. Other nations have their own conceptions of liberty, their own kultur, which has nothing in common with Magna Carta and to which the principles of Magna Carta are as foreign as they are to the Aleutians: but we

* * who speak the tongue

That Shakespeare spake; the faith and morals hold That Milton held,

are saturated with the spirit of the Charter, it is part of our birthright—and may I add "We must be free or die" in part for that very reason. So proud were our ancestors of it and its congener, the Carta de Forestâ, that Sir Edward Coke in the Proëme to his Second Institute (which contains a valuable and learned Commentary on the Great Charter) says that they "have been confirmed, established and commanded to be put into execution by thirty-two several Acts of Parliament in all." 4

It was not without reason that many American lawyers of the highest standing united two years ago

in celebrating the Seventh Centennial Anniversary of the Sealing of the Charter by King John at Runnymede on June 19th, 1215. For the Constitution of the United States is implicitly adumbrated in it as is the Bill of Rights of 1689.

In all institutions we must look below the surface and find the soul underlying the form. Not quite right was he who said

"For forms of government let fools contest,

Whate'er is best administer'd is best"; 5 many law-abiding, patriotic Americans would fight to the death before they would submit to a monarchy, and many law-abiding and patriotic Canadians would fight to the death against a republic. But there is more than a grain of truth in Pope's apothegm. The Canadian with a King who reigns but does not rule and the American with a President who rules but does not reign have the same conceptions of liberty, the same ideals of justice, the same aspirations toward individualistic freedom of act, thought and speech, combined with a state repression of act or perhaps even of speech noxious to the community—freedom according to law.

That result necessarily follows from the democracy of those peoples which for want of a better term we are accustomed to call the Anglo-Saxon peoples. ⁶

Democracy is not a form of government but a state of thought.

A century ago, Upper Canada had on paper almost the same form of government as Ontario has today yet a century ago the common people had almost no control over the Administration, today the Administration bows and must bow to the people in everything, must justify every act to the electorate or cease to be the Administration.

A little more than a century ago, an unwise if conscientious king could lose to the Empire, flourishing Colonies which desired to remain loyal if they could be loyal consistently with self-respect—Colonies which did not set out to separate from the British Crown but which were forced to choose between being loyal and being free. Today, no king would venture on such a policy—and if he did he could not carry it into operation. And yet the constitution of the Mother Country is not altered externally—but the whole soul and spirit of her institutions have suffered a revolutionary change.

It is not alone or chiefly in the letter of Magna Carta, the form or the content of its provisions that we are to look to discover its importance and revolutionary character but to the tendency, the implication of the whole magnificent document.

It is significant that it was wrung by force from a king of Norman descent. The ancestors of the English people had before the Norman Conquest looked upon their kings as chosen by themselves to rule over them; and the noxious absurdity (according to our democratic thought) of Divine Right had scarcely a footing amongst them. When Aethelred the Unready displeased his people, the Witan promptly deposed him and later recalled him on his promise to do better—the Saxon King was a President for life subject to recall.

The Norman Conquest set back the hands of the

clock for centuries in this as in many other essentials of civilization—as we understand civilization. Norman kings claimed by conquest although they did bolster up their right by an empty and formal acclaim by the people of England; and they also claimed the throne by the Grace of God, that is by Divine Right. It was with a king who looked upon himself as the vicegerent of the Almighty that the Barons had to deal; but they did not admit that they were traitors to God or that they warred against Him. The language of courtiers is proverbially fulsome with flattery—the address to King James I, four hundred years later, of the translators of the Authorized Version of the Bible, rouses the gorge of the people of today—that shambling cowardly king was like "the Sun in his strength," whose "confidence and resolution" had "so bound and firmly knit the hearts of all Your Majesty's loyal and religious people unto you that Your very name is precious among them": he was "that sanctified person who under God" was "the immediate Author of their true happiness''-and more of the same kind. But these very translators would have promptly raised the standard of rebellion against that marvel of wisdom and strength if he had attempted to allow his zeal toward the House of God so much lauded by them, to show itself in favor toward the "Popish Persons at home or abroad" or the "self conceited Brethren who run their own ways," whom they so reprobated.

His son, Charles I, found how far his people believed in Divine Right of Kings when a quarter of a century later, he lost his head literally, having long before lost it metaphorically—and his son James had to go on his travels because he presumed too far on the forbearance of his "loyal subjects."

And, too, however courtly in their speech toward King John, were his subjects, they did not hesitate to employ force to achieve their ends. It is the unhesitating use of force to attain their rights from a sovereign, which distinguishes a free people (as we understand freedom) from an abject people. No matter how strong, learned, pious a nation may be, if and so long as it believes that its sovereign reigns by the Grace of God, that he is really the donee of a power of which God is the donor, and that he does not owe his sovereignty to the consent of his subjects—these subjects are not freemen, they cannot conscientiously use force against him, anything they wish they may ask for but not demand, anything they may obtain is not a right but a gift which may be recalled—they are subjects in reality as we British are subjects in name.

With kings who have that conception of their position, negotiation may be successful for a time but, as has recently been pointed out in a State Paper of transcendent importance and great ability, "No autocratic power could be trusted to keep faith " " or observe its covenants."

Accordingly the Barons using force as they did to obtain promises, did not fail to provide means whereby these promises would be implemented—they took possession of the City of London, the Archbishop of Canterbury (their colleague), of the Tower, and provision was made for the election of twenty-five Barons of the Kingdom to cause the terms of the Charter to be observed.

Had this provision been carried into effect much of the subsequent trouble would have been avoided; failing it, England had again and again to experience the *Punica fides* of her kings.

Passing, however, from that unhappy consideration, we may notice that it is not without significance that while those who forced the Charter from an unwilling king were Barons, they had the common people with them—inarticulate as these were and for some time were to be in affairs of state, the commonalty of London secretly agreed to open their gates to the Barons; and notwithstanding that King John secured himself in the Tower, the City, defying his vengeance, opened Aldgate and the reforming Barons marched in thereat.

True it is that most of the provisions of the Charter are made for the advantage of the nobility and their tenants; but underlying the form there is ever found the principle which looks forward to the times when the common man will be recognized as the real object of the State's regard, whose well-being must always be in the eye of the State.

The first thing I notice is the set of Articles concerning the Courts.*

It is impossible for a student of the ancient law not to recognize that the Royal Courts of Justice were considered a personal appanage of the king and that a main object of their existence was to secure to the king

^{*} My references are to the Charter as given in Richard Thomson's "An Historical Essay on the Magna Charta," London, 1829, which is the treatise most generally available. A more recent work is McKechnie's Magna Carta, Glasgow, 1915. Sir William Blackstone's sumptuous and valuable volumes should not be overlooked.

a sufficient revenue. Whatever might be said of the local courts, the king's courts were a costly luxury. Being presided over by courtiers, members of the household of the king, these courts naturally followed the king in all his journeys throughout the realm—and if there is one thing more noticeable than another in the ancient kings, it is their constant journeying from one place to another. Much of this was of course due to the Royal Prerogative of taking for the king's use any chattel property of the subject at a price to be fixed by the king's officer. Naturally the supply would run out at the place at which the court was stationed; and purveyors must seek fresh fields and pastures newand the court would move again. Or it might be that the king would graciously favor one of his subjects by abiding with him for a time, the glory of entertaining a king being supposed to be an equivalent for the ruinous expense.10

The Royal Courts following the king, the suitors must needs do the same, to their constant uncertainty, their frequent inconvenience and their occasional undoing.

It was accordingly provided in the Charter that that court or portion of the court (I do not enter into contentious matters) which dealt with causes between subjects should be stationary; and cap. XVII was framed—"Communia placita non sequantur curiam nostram sed teneantur in aliquo certo loco." 11

This was the first definite pronouncement that the courts were for the people's convenience, not for the king's advantage. 12

And our courts have today their seat at some fixed

place, convenient for suitors and not where a king, a president or a governor may chance to be for the time being or may direct them to be held.

Provision was also made for trial courts sitting in each County four times a year, thus bringing justice to the door of the litigant and relieving the jurors from the intolerable burden and expense of leaving their own County and traveling to Westminster or elsewhere to perform their functions.

Little advantage would be derived from courts, wherever they might sit, if the judges were not versed in the law they were to administer. In the olden time, it was not legal knowledge or high attainments which procured an appointment as Judge or even Chief Justiciar—too often it was the royal favorite who became the judicial officer, not that he might do justice according to the law, for he was not infrequently grossly ignorant of law, but that he might increase his income by fees or bribes and the royal income by fines. Corruption cannot be guarded against, gross ignorance may. The King promises, cap. XLV, "Nos non faciemus Justiciarios, Constabularios, Vice-Comites, vel Ballivos, nisi de talibus qui sciant legem regni, et eam bene velint observare." 13

While constables, sheriffs and bailiffs continued and still continue to be appointed who are laymen, they are liable both civilly and criminally for violation of the law—and while a Lord Chancellor or Lord Keeper might for some centuries be appointed from those who were not lawyers, ¹⁴ Judges began shortly after the Charter, and no doubt largely in consequence of it, to be appointed almost exclusively from the Bar.

By the British North America Act 1867, the written Constitution of the Dominion of Canada, all Judges must be appointed from the Bar of the Province in which they are to act; by the Statutes of Ontario, even a County Court Judge must have been at least seven years at the Bar of the Province. ¹⁵

In England for a time the House of Lords sat as a whole as the final Court of Appeal, but for many years the Lay Lords have not taken part in such matters. 16

It took six hundred years and more to get rid of the lay-judge in England; but the principle was declared in Magna Carta—and is it not the same in essence as the principle that it is the law that must govern, not the will of men capriciously exercised?

The same underlying thought was responsible for the provision, "Nullus Vicecomes, Constabularius, Coronatores, vel alii Ballivi nostri teneant placita coronae nostrae." ¹⁷

In the Courts, the right of life, liberty and property were to be protected.

"Nullus Ballivus ponat de caetero aliquem ad legem, simplici loquela sua, sine testibus fidelibus ad hoc inductis." ¹⁸ The full explanation of this provision would require the discussion of law now happily obsolete; it is sufficient to say that the meaning is that no one against whom a charge is made is bound, simply because a claim is made against him, to prove the claim to be unfounded—he is not "put to his law" until credible witnesses are adduced against him; in other words the plaintiff must prove his case before the defendant can be called upon, a cardinal principle in

our jurisprudence. It involves also the principle that anyone charged with crime shall be considered innocent until he is proved guilty—that his guilt must be proved by witnesses and not by confession wrung from him by torture, physical, moral or mental—it excludes the French system which suggests that an accused must be held guilty till he proves his innocence—it excludes equally the hideous "Third Degree" which disgraces some English speaking communities to this day.

Then comes the corresponding protection to one charged with an offence against the State—"Nullus liber homo capiatur vel imprisonetur aut dissaisiatur aut utlagetur aut exuletur aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terrae."

Whatever may be the origin of the jury system and whatever may have been its prevalence at the time of the Charter (and perhaps the last word has not yet been said on either point), Magna Carta made it by this clause a cardinal principle in English jurisprudence. This is not the time or the place to discuss the merits or the beauties of the jury system—while we in Ontario have got rid of it in the vast majority of cases, it has free course and is glorified in most if not all of the United States. 20 It would appear that the Barons introduced this clause, fearing that they might be deprived of their right to be tried by their peers, the other Barons; and that they might be tried by justices appointed by the king who would be professional and not occasional judges. They builded better than they knew -the King's Courts became the refuge and protection of the innocent accused, and the common man was tried by a jury of common men and his peers, while the Baron had his jury from his own class. As the Royal Courts and not the local courts administered justice, the criminal law of England became uniform, an enormous advantage.

If we in Ontario have forgotten the merits of the jury we have not failed to remember and act upon the spirit of the next section. "Nulli vendemus, nulli negabimus, nulli differimus, rectum aut justitiam." 21 I do not know that anywhere in the English-speaking world is it charged or if charged generally believed, that justice in the Courts is sold, seldom is it thought that justice is absolutely denied; but is there no country, no State where justice and right are delayed? And is not the delay of justice, a denial of justice? Is not even the time taken up waiting for a hearing, a denial of justice? Not only does hope deferred make the heart sick but delay often produces irreparable loss-not only is the law blamed and the judges cursed, the administration of justice brought into disrepute a public loss and calamity—but there often is private loss, private calamity. That being so in civil matters, not less important is reasonable speed in criminal cases—punishment loses half its effect if not promptly administered, and no one gains by delay but the criminal and his lawyer. In the Dominion we think that if a murderer is not hanged within a year of his crime he has the right to complain that he has been deprived of his rights under Magna Carta. 22

In connection with this should be read the earlier section "Nihil detur vel capiatur de caetero pro Brevi

Inquisitionis de vitâ vel membris, set gratis concedatur et non negatur." 23

In the change in criminal proceeding brought about by subsequent legislation, this clause became useless and almost unintelligible; but it was long a living and important reality. One committed to gaol on a charge of crime might be imprisoned a long time before trial; and at the trial it might appear that there was no foundation for the charge. In view of this possibility, the law provided that he could sue out a Writ of Inquisition—Breve de Odio et Aciâ or de Bono et Malo—upon which the Sheriff must inquire whether he had been committed on just cause of suspicion or from hatred and ill-will (odium et aciam)—if the latter turned out to be the case, the prisoner had a right to be admitted to bail. 24

This provision of Magna Carta throws a lurid light on the practices of the Royal Officers whose duty it was to issue these writs; and of course, the writ itself was the early predecessor of the writ of Habeas Corpus (which did not come into general use until about the end of the 16th century).

The unlawful taking by the King or his officers of the property of the subject is restrained by several sections—the "Relief" to be paid on the death of those holding direct from the King is kept down to the "antiquum relevium," the ancient relief 24a—towns or private individuals were not to be obliged to build bridges or river-embankments except such as they had been accustomed to build as of right 25—only reasonable amerciaments were to be assessed and these not to deprive a merchant of his goods or the villein or

laboring man of his cart—"for trade and traffic" says Coke "are the livelihood of a merchant and the life of the commonwealth"; and it would be brutal to take away the laborer's cart and make the miserable creature carry his fertilizers on his back. ²⁶

"Omnes Comitatus et Hundredi, Trethingii et Wapentachii sint ad antiquas firmas, absque ullo incremento, exceptis Dominicis maneriis nostris." ²⁷

The City of London and all other Cities, Towns, Burghs and Ports were to have all their ancient liberties and free customs in all respects. ²⁸ Custom is the life of the law.

While purveyance continued to show its evil head for some centuries later, (for it was not formally abolished till after the Commonwealth), much of its evil was destroyed by the Charter—"Nullus Constabularius vel alius Ballivus noster capiat blada vel alia catalla alicujus, nisi statim inde reddat denarios aut respectum inde habere possit de voluntate venditoris." ²⁹ The King had to have provisions, fuel, etc.; but his officers were thenceforward to pay on the spot for it (unless the owner voluntarily gave credit) and the immediate payment of "denarii" has a wonderfully quieting effect both on the subject who must give up his goods and the officer who might be tempted to exceed his master's necessities.

All this is rudimentary Eminent Domain; but we do not at the present time recognize that there is that necessity to supply the personal wants of the king which characterized the ancients—indeed the whole frame of society has changed, open markets and the laws of supply and demand have made it possible for

the king to procure his supplies without forcing an unwilling subject.

Where there is a real necessity as for land in a certain place, the head of the State may still expropriate, but as in Magna Carta, he pays denarios down.

The corresponding practice of taking the use of the common man's horses and carts for carriage of the king's goods was stopped by the Charter—"Nullus Vicecomes vel Ballivus noster vel aliquis alius capiat equos vel carrettas alicujus liberi hominis pro carragio faciendo, nisi de voluntate ipsius liberi hominis." 30 We cannot allow the King to starve but he must send for his necessaries and not compel us to take them to him.

By far the most important provision of the Charter, although it is certain that none of the parties, King, Bishops, Barons, thought so, is that which is the foundation of all freedom in a monarchy, that which gives control of the purse—"Nullum Scutagium vel auxilium ponatur in regno nostro nisi per commune consilium regni nostri * * * ." 31

The Commune Consilium, the Common Council, at this time was the body of tenants in capite, tenants holding directly from the king, and qualified simply by virtue of that tenure. The king looked for his "aids" to his tenants in chief, and this clause provided that they, not he, should raise the aid, should grant him money. But the principle was fixed—no money was the king to have from his people except such as they were minded to give him. The time had not come when the Common Council was to develop into a Parliament, but it was to come, and when it came, the principle

of Magna Carta was not forgotten; Parliament held the purse strings and the king must look to the Commons for money to carry on his wars. Thus it was and is that Parliament in fact declares war, for it must supply the means to carry it on—and thus the Congress of the United States is wholly seized of all questions of peace and war.³² In some nations, the king may alone declare war, at least if the war be defensive; he judges whether it is defensive, and if he wants war, it is sure to be defensive.

While the Barons thus clipped the wings of the Royal power, the mesne Lords, the inferior Lords of the fee were also checked in their illegal demands upon the terre-tenant. "Nos non concedemus de caetero alicui quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum et ad faciendum primogenitum filium suum militem et ad primogenitam filiam suam semel maritandam; et ad haec non fiat nisi rationabile auxilium." This was in reality to fix the amount of rent for which the immediate occupant of the soil was to be liable.

While merchants were to be free to come into and go out of England and to buy and sell, and foreign merchants were in time of war to be treated as well as English merchants were by the hostile belligerent ³⁴ (for commerce was the life of the nation), care was to be taken for one set of weights and measures, common to the Kingdom—"Una mensura vini sit per totum regnum nostrum et una mensura cervisiae et una mensura bladi, scilicet quartarium Londonii:et una latitudo pannorum tinctorum et russettorum et halbergettorum,

scilicet, duae ulnae infra listas. De ponderibus autem sit ut de mensuris." 35

Subjects also were to be allowed to go out from England and to return safely and securely by land or water "salvâ fide nostrâ," saving their allegiance, unless it be in time of war. This "salvâ fide nostrâ" is very important—at the Common Law of England, no subject could without the will of the Sovereign divest himself of his allegiance—"Nemo exuere patriam possit"; and this proviso was intended to preserve the right of his Sovereign and country to the faithful allegiance of the natural born subject.

It will be remembered that there has been a claim made that the war of 1812-14 was due at least in part to the practice of Britain seizing and "pressing" her natural born subjects who had become American citizens; this practice was based upon the Common Law of England (and of the United States) as laid down by all text-writers, English and American, and affirmed by the Supreme Court of the United States from the first and as late as 1830. The Treaty of Ghent was silent on the subject. Britain refused to give up her right; the negotiations between Webster and Ashburton in 1842 effected nothing as to this and Britain retained her right until 1870. The principle is not very unlike that principle vigorously disputed but still more vigorously and successfully maintained half a century ago that an American State cannot leave the Union-"Nulla natio exuere patriam possit." It never was contended by any English-speaking people that a subject might on becoming a citizen of the United States obtain permission to retain his former allegiance at

the same time and so in case of dispute be a traitor to one country of his allegiance or the other; that discovery was made by another nation whose conception of international law and international decency all know, because it is the marvel of the ages—I do not add, the admiration of the world.

Certain private rights of property are protected; the widow has her quarantine and her dower free from her deceased husband's debts and is not to be forced to marry that she may find a protector—thereby a status is secured to her a little higher than that of a cow. 37 Orphan children are not to be defrauded of their heritage by guardians who take charge of their estate during their infancy, whether the guardian be a kinsman or a person appointed by the king who is parens patriae; and if the father die indebted to the Jews or others, the children must first be provided with necessaries and the debt paid out of the residue and in any case no interest is to be paid on the debt as long as the heir is under age. 38 This is not wholly unlike the homestead law of some States and Provinces; and indicates a consideration for the manhood of the kingdom before commercial considerations.

A vivid light is cast upon the state of society of the time by the following section—"Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum et amicorum suorum, per visum Ecclesiae distribuantur; salvis unicuique debitis quae defunctis ei debebat."³⁹

The man who died without a will having no longer any use for his chattels and not having expressed his wishes as to their destination, was considered to have abandoned them, and anciently the king became entitled to them as "parens patriae"—after a time the kings gave these abandoned goods to the Church to do therewith what was best for the soul of the dead man; the Bishop was accountable to no one for his disposition of these chattels, too often not even the poor had any advantage from them, and rarely did the widow and orphan have any share. Creditors had no possible chance of being paid; the Church took all.

This section enables creditors to be paid and the remainder of the goods divided by the hand of near relatives and friends—our "Administrators."

Unfortunately this provision was more honored in the breach than in the observance; flagrant abuses continued, the church was aggrandized, the creditors, widow and orphan were defrauded for many years longer until the Statute of Westminster II in 1285 commanded that creditors should be paid, and a subsequent Statute in 1357 directed that the estate should be administered by the nearest and most lawful friends of the deceased.40 This injustice therefore existed for nearly a century and a half after its abolition had been solemnly provided for; during all which time, they who "sent widows away empty" were high in the Church and often in the State-whether or not they for a pretence made long prayers, they braved the woe pronounced by the Master upon those "who devour widows' houses."

Other and more public wrongs were directed to be righted. Some living on the Thames and other rivers, built weirs across the stream with a narrow sluice at their own side of the stream; the fish with which the English rivers at that time teemed were forced in their passage up or down to take to the sluice; there they were caught in shoals to the detriment of the other Englishmen living on the river and having an equal right to catch fish. These weirs, "Kydells" they were called, were ordered to be removed throughout all England—similar structures were allowed however at the coast where no man's right was interfered with. 41

In Canada and, I presume, in the United States, those who build dams on streams are bound to provide some means whereby fish may make their way up and down—this is simply preserving the riparian rights of everyone who has land on the stream.

Much land had been withdrawn from cultivation and turned into forest—the terrible New Forest of the Conqueror is the best known example, but other forests were made. The deer and other wild animals were the property of the king and must not be killed on pain of mutilation, even though they should be found destroying the crops of the unfortunate farmer—a forest was a curse to everybody but Royalty and a few favorites. King John undertook to disforest all forests which had been made in his time and to abolish all evil customs of Forest and Warrens and the officers in charge of them. Moreover all fences whereby his subjects were kept from the rivers, the king was to remove at once.⁴²

The Barons well knew that as soon as the king might think it safe to break his contract, he would be liable to do so—they saw to it that those who had been most active in wrong-doing in the king's service were

to be sent out of the kingdom; but a more important provision was made concerning his mercenary army: "Et statim post pacis reformationem, amovebimus de regno omnes alienigenas milites, balistarios, servientes stipendarios, qui venerint cum equis et armis ad nocumentum regni." 43

And ever since (as indeed before,) a large standing army has been looked at askance, as a likely instrument of oppression and tyranny in the hands of an unscrupulous monarch; all danger has been avoided by placing the military power below the civil power, a plan that would horrify the heroes of Zabern.

Knowing that they and their people must suffer in all cases of conflict with the neighboring peoples, the Barons stipulated for conciliatory measures toward Llewellyn of Wales and Alexander of Scotland, for the delivery up to the Welshmen of any lands wrongfully taken from them by the king, by his brother Richard or his father Henry II ⁴⁴—the first time perhaps in English history that foreign affairs were thus interfered with, but by no means the last.

Where war is not entered on without an impulse from the people or without "their previous knowledge or approval," there will be few unnecessary wars.

"We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the citizens of civilized states"; nothing in my opinion will do more to prevent wilful wrong internationally than giving those who must suffer, the right of declaring through their representatives

whether they will go to war. "Where public opinion commands, and insists upon full information concerning the nation's affairs," right is in most cases likely to be done.

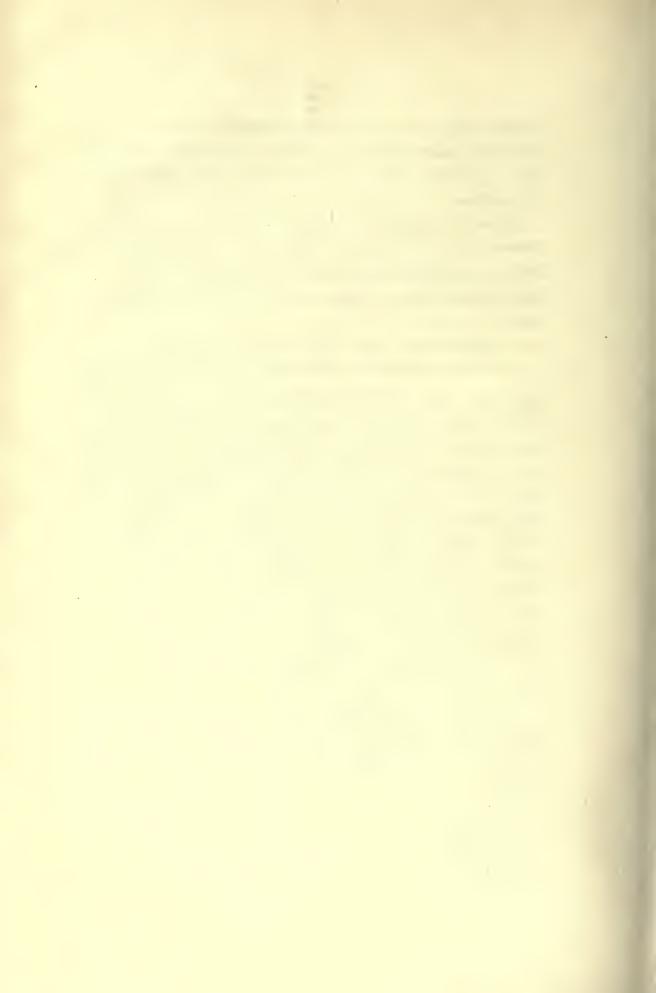
The hundred years of peace between the United States and Britain have been made possible only by both peoples standing by their pledged word and by their disputes being fought out in the open. Both have said

A scrap of paper where a name is set Is strong as duty's pledge and honor's debt;

and both have avoided intrigue and cunningly contrived plans of deception and aggression—they felt and knew that any advantage obtained by fraud or cunning would be a real detriment not only to the world at large but to themselves. As in the past so in the future, God grant that these nations filled with the spirit of Magna Carta and with the consciousness of true brotherhood, may be toward each other and toward the world, open in their aims, honest in their statements, true to their pledged faith, for so the world will be bettered in their betterment.

Above all, be it ever remembered in the darkest days to come,

"Only free peoples can hold their purpose and their honor steady to a common end and prefer the interests of mankind to any narrow interest of their own."



NOTES

1 A few years ago, in considering the power of the Legislative Assembly of the Province of Ontario to take away the property of one and give it to another, I said: - "the Legislature within its jurisdiction can do everything which is not naturally impossible and is restrained by no rule human or divine * * * The prohibition 'Thou shalt not steal' has no legal force on this Sovereign body * * We have no such restriction upon the power of the Legislature as is found in some States." Florence v. Cobalt (1908), 18 O. L. R. 275, at p. 279. The late Goldwin Smith made a spirited (if ignorant) attack upon my judgment, basing much of his objections upon Magna Carta. In a subsequent case, Smith v. London (1909), 20 O. L. R. 133, Magna Carta was urged in argument, and I took occasion to point out what Magna Carta has and to show that many of its provisions have become obsolete or have been repealed. In considering this case, I found (or made) occasion to examine Magna Carta with some minuteness both in its letter and in its spirit-some of the results of this examination appear in this Address.

2 The quotation is from my judgment in Smith v. City of London (1909), 20 O. L. R. 133, at p. 140.

3 Cromwell's fling at Magna Carta is mentioned in Campbell's Lives of the Chief Justices, Vol. I, p. 433. Kelyng's will be found in the same volume, p. 509, but more fully in 6 State Trials, p. 995. Their jingling jibe is amusing to a not unusual type of mind, but too coarse for our present polite society. It is no wonder that the Grand Committee of Justice of the House of Commons reported "That in the place of Judicature, the Lord Chief Justice [Kelyng] hath undervalued, vilified and contemned Magna Carta, the great preserver of our lives, freedom and property." 6 St. Tr., 995.

4 An objectionable practice is not uncommon in the United States of speaking of Sir Edward Coke, Sir Matthew Hale, etc., as Lord Coke, Lord Hale, etc.—I have even seen "Lord Cockburn." True, Coke, Hale and Sir Alexander Cockburn were Lords Chief Justices, and were in their Courts addressed as "My Lord," "Your Lordship," but they were not Peers. In olden days it was not unusual to speak of "My Lord Coke," etc., but that custom is as dead as the contemporaneous custom of speaking of Judges as "the Reverend."

5 Pope's Essay on Man, Epistle iii, ll. 303-4.

6 I who am neither Angle nor Saxon, yet call myself "Anglo-Saxon" in the sense used here, i. e., "English or having the same language and the same conception of government, etc., as the English."

7 It does no great harm to speak of King George V as King by the Grace of God, so long as we carefully bear in mind as we, the British folk, do that we mean and he knows we mean and the fact is that he is King by Grace of an Act of Parliament.

8 Of course, I refer to the epoch-making Address of the President of the United States to Congress on Tuesday, April 3, 1917—O faustum et felicem hunc diem! Had Charles I not shown that it was impossible to rely upon his pledged faith he would never have been executed. Yet there can be no doubt that, entertaining the views he did of the origin and character of royal power, he would have regarded himself as recreant to the trust given him by God, had he kept the promises made to his subjects which he had been forced to give.

The President's statement just quoted is in my opinion the most pregnant deliverance in this generation—no one but a historian would have thought of it, no one but a statesman made it the basis of action. I am quite sure its tremendous significance will display itself in the future of the world.

9 "The popularity of this Court [the Curia Regis] is attested by the number of fines which litigants paid for writs, for pleas, for trials, for judgment, for expedition or for delay." Holdsworth, History of English Law, Vol. 1, p. 27. All these were "honest graft" in the opinion of the king and his officers. Even in the time of the Plantagenet Edwards and later, "The King's rights to escheats and forfeitures and the chattels of felons seem sometimes to interest the judges almost as much as the due maintenance of law and order." Holdsworth, History of English Law, Vol. III, p. 242. The learned author puts the case very mildly indeed: I should have reversed the comparison and said, "Sometimes the due maintenance of law and order seem to interest the judges almost as much as the King's rights to escheats and forfeitures and the chattels of felons."

10 The right of Purveyance, as it was called, "was a right enjoyed by the Crown of buying up provisions and other necessaries by the intervention of the king's purveyors for the use of his royal household at an appraised valuation in preference to all others and even without the consent of the owner." Blackstone Comm., Book I, p. 287. This right will be spoken of more at length later on. Queen Elizabeth was a notorious sinner in the practice of imposing herself as a guest on her subjects, but the custom is noted of many monarchs to act in this way.

I have in the American Journal of Criminal Law for 1917 given an account of a trial for witcheraft arising almost directly from a visit of Edward II and his Court to the Prior of Coventry.

11 Thomson, p. 75 (XVII, 8). See his notes, pp. 197, 198, "Common Pleas shall not follow our Court, but shall be held in some certain place."

12 I am not unmindful of the Justices in Eyre; no one can read of the proceedings before Justices in Eyre without seeing that much of their duty consisted in procuring money for the King: very many of those who came before them were in misericordiâ, in mercy, and liable to pay a fine. It might be noted that while the Court of Common Bench generally sat at Westminster, it occasionally sat elsewhere, e. g., at York in the reigns of Edward III and Richard II; at Hertford in that of Elizabeth. Edward III claimed the right to have it sit where he pleased, and apparently had the claim allowed. Holdsworth, History of English Law, Vol. 1, pp. 74, 75.

Of course, the Exchequer always sat at Westminster where its offices, records and pipe-rolls were kept.

13 Thomson, p. 84 (XLV, 42). "We will not make Justiciaries, Constables, Sheriffs or Bailiffs except of such as know the law of the realm and are well disposed to obey it." Thomson, p. 240, says, "In the Statutes of King Ethelred it is ordained that 'a Judge who shall give any unjust judgment, shall pay to the King CXX shillings unless he be heard to swear that he did not know how to judge rightly' [I may remark parenthetically that I fancy the chances would be 100 to 1 that he would not be "heard" so to swear and thus deprive the King of 120 shillings-at least \$1000 of present value]. The Laws of Canute add that he shall be dismissed from his legal dignity if he do not redeem it from the King, according as it shall be allowed him." While a Judge acting within the powers of his office is protected from action, he may be removed on the address of both Houses of Parliament in England and Canada-or impeached in the United States. More than one Lord Chancellor has suffered condign and more, speedy punishment. "In the time of King Richard II, Earl Typtoft, a Chancellor," says Thomson, p. 240, "was even beheaded for acting on the King's warrant against the law:" but Lord Campbell knows him not. Ex-Chancellor Arundel in that reign was impeached and convicted but escaped death as he was an ecclesiastic; and unfortunate Simon de Sudbury was beheaded on Tower Hill by Wat Tyler and Jack Straw; but that was on general principles, the same general principles enunciated later by "Jack Cade the Clothier" and "Dick the Butcher," namely, "the first thing we do, let's kill all the lawyers." King Henry VI, Act 4, Sc. 2. It is almost if not quite certain that the person referred to as Earl Typtoft,

was John Tiptoft, Earl of Worcester, who was a Commissioner of Oyer and Terminer, i. e., a Judge at the Criminal Assizes: he was Lord High Treasurer and Chief Justice of North Wales: as Constable he tried and sentenced to be hanged several Lancastrians and when the wheel turned and Edward IV fled, the vengeful votaries of the Red Rose caused his head to be struck off. He was appointed Chancellor of Ireland in 1462 (or, as the D. N. B. says, 1464) by his grateful sovereign: it does not appear whether he ever sat as such. His execution was not for corruption, but was purely political. See D. N. B., Vol. 56, pp. 411-414; Haydn's Book of Dignities, p. 575.

The impeachments of Francis Bacon, Lord Vernlam and of Lord Macclesfield are well known; and Lord Westbury had a rather narrow escape.

Thomson goes on to say, If a Judge "who has no jurisdiction of a cause give judgment of death and award execution, the Judge and the officer who executes the sentence are both guilty of felony." There was a very curious case on this Continent.

When Canada passed under the British rule, Detroit was surrendered and Lieutenant Governors were sent out to command "Detroit and its Dependencies." These Lieutenant Governors or Commandants took it upon themselves to appoint Justices of the Peace, and in 1767 one Philip Dejean was so appointed: he also received a Commission from the Commandant, Major Bayard, as "Second Judge" to hold a "Tempery Court of Justice to be held twice in every month at Detroit, to Decide on all actions of Debt, Bond, Bills, Contracts, and Trespasses above the value of £5 New York Currency." (In New York Currency, a shilling was 12½ cents—a York shilling or "Yorker" still in vogue on the north shore of Lake Ontario in my boyhood, fifty years ago. £1=20s=\$2.50, £5=\$12.50.)

When Henry Hamilton was sent as Lieutenant Governor in 1775, he allowed Dejean to continue in his Court as Justice of the Peace, and Dejean went far beyond the limits of the authority of a Justice of the Peace. We are told that a man and woman were tried in 1776 by Dejean with a jury, six English and six French, on a charge of arson and larceny, and convicted of the larceny, but the jury "doubted of the arson." The man was executed, it is said by the hands of the woman who thus bought her freedom. The attention of the authorities at Quebec was drawn to the state of matters in Detroit by these extraordinary proceedings, and warrants were issued for Governor and Justice. The Grand Jury at the Court of King's Bench at Montreal on Monday, September 7, 1778, presented Dejean for "divers unjust & illegal Terranical & felonious Acts" during 1775, 1776 and 1777 at Detroit, and Henry Hamilton the Governor for that he "tolerated,

suffered and permitted the same under his Government, guidance and direction''-hence the warrant.

The stirring times following the American invasion of Quebec were on, and the offenders escaped immediate punishment.

By letter of April 16, 1779, Lord George Germain, Secretary of State for the Colonies (afterwards Viscount Sackville) said "The presentments of the Grand Jury at Montreal against Lieut.-Gov. Hamilton and Mr. Dejean are expressive of a greater degree of jealousy than the transaction complained of in the then circumstances of the Province appeared to warrant. Such stretches of authority are, however, only to be excused by unavoidable necessity and the justness and fitness of the occasion." He therefore ordered that the Chief Justice should examine the evidence of "the Criminal's Guilt, and if he be of opinion that he merited the Punishment tho irregularly inflicted . . . a "nolle prosequi" should be entered. This was done.

See my Address before the Michigan State Bar Association, June, 1915, "The First Judge of Detroit and his Court."

14 Anthony Ashley Cooper, Lord Shaftesbury, was the last non-lawyer to reach the Woolsack: he was appointed Lord Chancellor in 1672 by Charles II, and at once proceeded to make a fool of himself, as all interested may read in Campbell's Lives of the Lord Chancellors, Vol. III, pp. 253 sqq. Sir Christopher Hatton had been appointed by Queen Elizabeth apparently for his skill in dancing (1587); but Shaftesbury's appointment was for political reasons of the most corrupt kind—no political machine, Tammany or other, could give points to the ancient English statesman. But no king or cabinet ever again ventured to appoint a lay chancellor after Shaftesbury: and no one has ever triumphed for long who showed contempt for the gentlemen of the Bar. Lawyers are quick to resent and have long memories.

15 The B. N. A. Act (1867), 30-31 Vict., c. 3, s.s. 97, 98 (Imp.): R. S. O. (1914) c. 58, s. 3. The County Courts are local Courts of Record of inferior and limited civil jurisdiction: but the County Court Judges have very extended criminal jurisdiction.

16 On this Continent, for many years the Second Chamber of the Legislature (i. e., the Senate) of New York, sat with some judges as the Final Court of Appeal: this came to an end many years ago without regret on any side. (The Constitution of the State of New York 1777 by Article XXXII provided "That a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations which shall be established by the Legislature, and to consist of the President of the Senate for the time being, and the Senators, and

Judges of the Supreme Court, or the major part of them''; there was no provision that the Senators should necessarily be lawyers, and the natural result was that the lay Senators sometimes thought the judgment unjust, and voted to reverse it, notwithstanding the fact that it was sound, as a matter of law.

In other words, there was a sort of referendum to selected lay Judges, as our Court of Appeals, and, as one may well judge from this Court coming to be called the "Court of Errors," the plan did not work very well.

Nevertheless, when the second Constitution was adopted in 1821, the same provision was continued in Article V. It thus came about that from 1777 until the Constitution of 1846, which took effect in 1847, or for substantially 70 years, the State muddled along with its Court of Errors. The result became more and more unsatisfactory to the Bar of the rapidly growing State. During all this time, it is said that Court had the courage of decision to condemn laws as unconstitutional only three times. The Judges had all been appointed down to 1846, and they had been men of learning and high character, who were too often humiliated by having their judgments reversed by the Court of Errors.

In 1846, a wave of what was considered democracy swept over the State, and in the new Constitution appointed Judges were done away with, and in the place of the Court of Errors the Court of Appeals was provided; which Court consisted of four elected Judges of the Court of Appeals, and the four Justices of the Supreme Court having the shortest remaining period of time to serve before their terms expired. In other words, the Court of Appeals consisted of four Judges elected for terms of eight years, and the four Supreme Court Justices elected for the same period of time, whose terms would first expire. In this way, the senior Supreme Court Justices in matter of service constituted one-half the Court of Appeals. This Court of Appeals proved more satisfactory than the Court of Errors, but it was too fluctuating to be stable. Furthermore, there was no provision that a Justice of the Supreme Court should not sit in review of his own judgment, an oversight which resulted in Justices of the Supreme Court thinking it their duty to sit in cases they had heard in the Court below, at times, with the naturally resulting criticism of a Court that too often affirmed its own decisions. The result was that when the Constitutional Convention of 1867 sat. a provision was made which was approved by the people (all the rest of the proposed Constitution was voted down). It proposed a revision of the Court of Appeals part of the Constitution, under which the people elected a new Court of Appeals for terms of 14 years, and that able Court soon began to give satisfaction to the people and the Bar. Except as to limitations of appeals, that Court was continued in practically

its present form by the Constitution of 1894, which is still in effect. There is an additional constitutional provision, under which the Governor can appoint Justices of the Supreme Court to sit in the Court of Appeals when the calendar of that Court is overcrowded, and the Governor has exercised that power for some years by appointing four Justices of the Supreme Court to sit as Judges of the Court of Appeals.

In your adjoining State of New Jersey there are also lay judges: but I understand they are not troublesome. Nowhere else in the Union, I think, is such a practice known. Even as late as 1834 lay peers constituted a House of Lords to hear an appeal—the last occasion was June 17 of that year-in 1844 when the celebrated O'Connor case came on for decision some non-legal peers attempted to vote but on the President of the Council (Lord Wharncliffe) expostulating, they withdrew. Lord Wharncliffe said, speaking of the Law Lords, "In point of fact * * they constitute the Court of Appeal, and if noble lords unlearned in the law should interfere to decide such questions by their votes instead of leaving them to the decision of the law lords, I very much fear that the authority of this House as a court of justice would be greatly impaired." In 1883, in the case of Bradlaugh v. Clarke, (1883) 8 A. C. 354, the second Lord Denman attempted to vote but his vote was ignored. I have myself seen him sitting in the House with the Law Lords on the hearing of an Appeal, but absolutely no attention was paid to him-he was a well-known "eccentric" who died in 1894 in his 90th year. The curious in this matter may consult 17 Law Quarterly Review, pp. 367-370: Courtenay's Working Constitution of the United Kingdom, London, 1901, pp. 102, 103: Holdsworth's History of the English Law, Vol. 1, pp. 187, 188.

17 "No Sheriff, Constable, Coroners or other of our officers shall hold Pleas of the Crown." Thomson, pp. 76, 77 (XXIV, 14) (we must not be too critical of the grammar—"Rex super grammaticam." The Coroners even later were responsible for much "Crowner's-quest law." "Is that the law?" says the Second Clown in the Churchyard to his learned and sententious colleague. "Ay marry is't; crowner's-quest law," answers the wise First Clown (Hamlet, Act V, Sc. 1): and the hash the clown made of a famous case in 1562 (Hales v. Petit, Plowden's Reports, pp. 253 sqq.) is not much worse than Coroners have been known to make of the law in more modern times.

18 "No officer shall hereafter put anyone to his law on his own simple charge without credible witnesses adduced for that purpose." Thomson, pp. 80, 81 (XXXVIII, 28).

19 "No freeman shall be seized or imprisoned or dispossessed or outlawed or in any way molested, nor will we condemn him or commit him to prison except by the legal judgment of his peers or by the law of the realm." Thomson, pp. 82, 83 (XXXIX, 29). (Perhaps "set forth against him or send against him" more nearly expresses the sense of the original.)

20 On the introduction into Canada in 1763 by Royal Proclamation of the English law including trial by jury, the French Canadians expressed their astonishment at the English preferring to leave their rights to the adjudication of tailors and shoemakers rather than their judges, and we in Ontario have by a process of evolution almost reached the same mental attitude.

In an Address before the Illinois Bar Association, May 28, 1914, I stated as follows on this matter: "In Ontario there are very few cases in which a jury is of right; in most instances the presiding judge is master of the situation, he may try a case with or without a jury as seems best. At Toronto in 1913, in the lowest court, the Division Court, not one per cent. were tried with a jury (the official report for 1913 shows that out of 63,675 suits only 117, less than one-fifth of one per cent. were tried by a jury).

"In the next higher, the County Court, 18% were tried with a jury, and in the Supreme Court, 26%. In most of these cases the jury were not allowed to find a general verdict but were confined to answering certain questions of fact submitted to them by the judge, he reserving everything else to himself. In more than thirty years' experience I have known of only two appeals against the action of a trial judge in striking out a jury notice—both unsuccessful.

"The saving of time—and wind—is enormous. The opening and closing speeches of counsel to the jury and the charge of the judge are done away; in argument there are very few judges who care to be addressed like a public meeting and quite as few who are influenced by mere oratory—all indeed must ex officio be patient with the tedious and suffer fools gladly. Vehement assertion, gross personal attacks on witnesses or parties, invective, appeal to the lower part of our nature, are all at a discount; and in most cases justice is better attained, rights according to law are better ensured. Moreover, during the course of a trial a very great deal of time is not uncommonly wasted in petty objections to evidence, in dwelling upon minor and almost irrelevant matters which may influence the jury, wearisome cross-examination and reiteration, etc., all of which are minimized before a judge.

"But it is never to be forgotten that the courts belong to the people, and the wishes—even the prejudices—of the people must be borne in mind. If for any reason the body of the people were to come

to the opinion that a judge trial was not a just trial, justice would not be satisfactorily administered if that form of trial were adopted. There I leave the matter.''

In criminal cases the proportion of cases tried by a jury with us is small, although in most cases the accused has the option to be tried by a jury if he so desires; in murder and a few other cases, a jury must try.

Jury trial was once and for long a real bulwark of liberty, particularly in cases of alleged offences against the State or King: whether it is still the Palladium of liberty every people must judge for itself. It seems to me that if our liberty gets in such a bad way as to require a Palladium, the Jury system will no more save it than the original Palladium saved Troy. Perhaps, sub judice lis est.

21 "To none will we sell, to none will we deny or delay right or justice." Thomson, pp. 82, 83 (XL, 30).

22 I may be permitted to add here an extract from the Address mentioned in Note 20 supra. Speaking of the long drawn out criminal trials reported in some States, I said:

"Is all this good for the State?

"Of course, if the people really want that sort of thing they must have it; but do the people really want it? Of course the criminal classes, the potential criminal, the lawyer who is paid by the length of time he can make a case last or who seeks glory from technical ingenuity or florid rhetoric, the yellow and near yellow paper and its readers, all are in favor of it. But the man who has to pay for it, the soberminded citizen who takes an interest and a pride in his country, who is jealous of her honor and reputation—what of him? and is he not to be considered?

"If a criminal trial is a game, well and good. The fox hunter who was expostulated with on the cruelty of his sport said, "The men like it, the horses like it, and nobody can be certain that the fox does not like it." But even fox-hunters pay for their game out of their own pocket, and if a fox does get away now and then, there is no great harm. We in Canada are too poor to be willing to pay for such a sport and too busy to be willing to waste weeks on an investigation for which days or even hours are ample. We think that except in very grave offences, such as murder and the like, an accused should have the option to be tried by a judge and without delay, instead of waiting for a jury sittings. If one charged with crime be desirous of trial by jury we allow him a copy of the jury panel in sufficient time to make inquiries as to any objection to the jurymen, and when a trial is set we insist on it being proceeded with, with due diligence and reasonable speed. The first time I met your ex-president, Mr. Taft, he spoke

of the intolerable delay in criminal trials in the United States. I told him that a short time before, I had gone to a Canadian city to hold the Assizes on the same day that a few hours further along the same line of rail but across the international boundary, a judge began to get his jury in a murder case; that I had tried four criminal cases and seven civil cases, and was home in Toronto before my American brother had half his jury. I told the New York Bar Association that in my thirty years' experience I never saw it take more than half an hour to get a jury. Let me add that I have never but once heard a proposed juryman asked a question about reading newspapers, forming an opinion, or anything else. I have never known even a murder case (except one) take four days; very few indeed take more than two; none tried before me has taken as much as two full days; and medical or other experts are not allowed to drag out proceedings. We think four on each side enough except in special circumstances and we keep these well in hand.''

23 "Nothing is to be given or taken hereafter for the Writ of Inquisition of life or limb; but it is to be given gratis and is not to be refused." Thomson, pp. 80, 81 (XXXVI, 26).

24 Blackstone Commentaries, Bk. III, pp. 128, 129, gives a fair account of this Writ de Odio et Aciâ (Atiâ or Athiâ).

24a Thomson, pp. 66, 67 (II, 1): as to "Relief" see Blackstone Comm., Bk. II, pp. 65, 66.

25 Thomson, pp. 76, 77 (XXIII, 11).

26 Thomson, pp. 74, 75, 76, 77, 201, 202 (XX, 9).

27 Thomson, pp. 76, 77 (XXV): "All Counties and Hundreds, Trithings and Wapentakes shall be at the ancient rent, without any increase, excepting in our Demesne manors." (This is somewhat differently worded in McKechnie's work.)

28 Thomson, pp. 72, 73 (XIII).

29 Thomson, pp. 78, 79 (XXVIII, 18): "No Constable or other officer of ours is to take grain or other goods from anyone without forthwith paying cash for them unless the vendor willingly gives credit."

The Statute (1660) 12 Car. II, c. 24, finally abolished Purveyance and many other feudal absurdities: but the credit for this should be given to the Commonwealth which rendered the whole feudal system offensive to the nation at large—the influence of the Commonwealth upon English legislation and law generally was very great, and in every respect beneficial—perhaps this influence for good has not even yet received full recognition.

"Royal Progresses" continued to survive for a time: but now the King pays for what he gets like any one else.

30 Thomson, pp. 78, 79 (XXX, 20): "No Sheriff or officer of ours, or any one else is to take the horses or carts of any freeman for the purpose of carriage without the consent of the said freeman."

31 Thomson, pp. 72, 73 (XII, 32): "No scutage or aid shall be imposed in our realm except by the Common Council of our Kingdom " " " (There are trifling exceptions depending upon feudal law and custom but of no moment at the present and of little at any time.)

32 This is, of course, the origin of the "constitutional rule" that all money votes must originate in the House of Commons—and that the other House cannot amend or change them. In Canada, the British North America Act (1867) specifically provides that "Bills for appropriating any part of the public revenue or for imposing any tax or import, shall originate in the House of Commons." Sec. 53. This is intended to crystallize the practice at Westminster and to make it plain that the people hold the purse-strings. Sometimes for convenience bills involving public expenditures are introduced in the Canadian Senate: the money sections are printed in the bill so as to make it intelligible, but these sections are always struck out in Committee. When the bill is sent up to the Commons, these sections are in red ink or italics and supposed to be blank and inserted in the Commons.

While by Rule of the House of Commons copied from the celebrated Rule passed by the Imperial House of Commons, July 30, 1878, (9 E. Com. J. 235, 509) when the House of Lords rejected the Paper Duties Bill, the "aid and supplies granted to His Majesty . . . are the sole gift of the House of Commons . . . and . . . such grants . . . are not alterable by the Senate," instances have been known, not many in number and "not to be drawn into a precedent," that an amendment in the Senate has been acquiesced in by the Commons—for example, when such a course has been found necessary so as not to delay the passage of a bill at a late period of the session.

The usual course, however, is to give the Senate an opportunity of withdrawing its unconstitutional interference.

Where as in the United States both Houses are elected, the necessity for such a constitutional rule is not so manifest.

33 "We will not hereafter give leave to anyone to exact aids from his freemen except to ransom himself, to make his eldest son a knight and to give a dowry once to his eldest daughter: and not even these unless the amount is reasonable." Thomson, pp. 72, 73, 74, 75 (XV, 6). It was wholly natural that the Lord should be redeemed from captivity and his eldest son should be made a soldier: and in the then existing condition of English society (not yet wholly obsolete) a dowry went with the bride: but the tenants were to be called upon to pay dowry

only for the eldest daughter and for her only once (not because a divorce court was then flourishing but because war public or private was at once the business and the recreation of a gentleman, a raid on the Scots or the Welsh or even a disagreeable neighbor was the existing equivalent of a hunting trip to the Maine or Canada moose grounds and the mortality was quite as high as amongst our deer-hunters).

34 Thomson, pp. 82, 83 (XLI, 31).

35 Thomson, pp. 80, 81 (XXXV, 12): "There shall be one measure of wine throughout the whole Kingdom and one measure of ale and one measure of grain, that is the quarter of London, and one breadth of dyed cloth and of russet and of halberjects, namely, two ells within the lists. Also it shall be the same with weights as with measures."

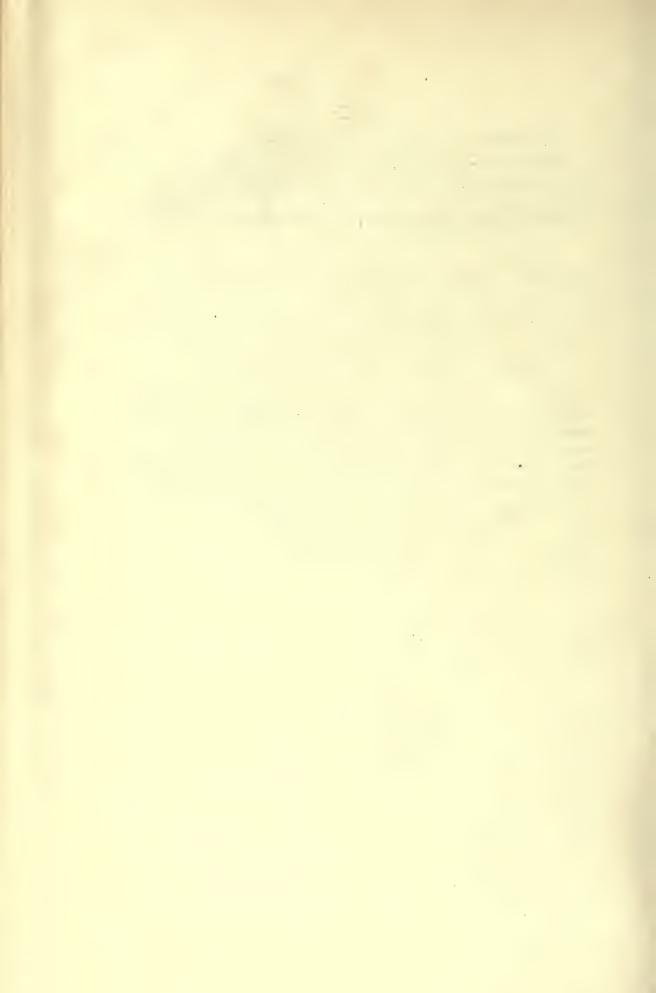
This is the origin of the "Wine Measure," the "Ale or Beer Measure," the "Dry Measure" and the "Cloth Measure," which those of my age will remember learning at school. The "quarter" is eight bushels, still used in the English corn market, although on this Continent we always use the bushel. Russets were an inferior kind of cloth dyed a dull reddish hue with bark (not unlike the "butternut" of American and Canadian pioneers—I have worn it) used generally by monks and rustics: halberjects, haubergets, haubergets or habergits, a very thick and coarse mixed English cloth of various colors (not unlike our coarse tweeds)—the precise meaning does not seem to be clear. See Murray's New English Dictionary. The "ulna" was the "English ell" of 45 inches: the "lists" were the selvage strips (the word is used by Shakespeare in this sense).

It is unfortunate that the provisions of this section were not put into full effect: and also unfortunate that so far as they were put into effect, the simple decimal division was not employed. We must not despair of seeing such a system become universal in commerce as it is (almost) universal in science.

36 Thomson, pp. 82, 83 (XLII, 33). The claims of the United States and Britain at the outbreak of the War of 1812 are discussed in an Address by Hon. John W. Foster at the meeting in Washington, December 15, 1910, of the American Society for the Judicial Settlement of International Disputes and in a series of articles by the Editor, Col. Asa Bird Gardiner and myself in the "Army and Navy Gazette," New York, May 17, June 7, July 19, November 1 and November 29, 1913. I have in my articles quoted the authorities rather fully. Webster's Works, Vol. V, pp. 145-6, 540; Vol. VI, p. 318; Winsor, Vol. VII, pp. 483-488. Mahan, Vol. I, p. 3, may be looked at.

37 Thomson, pp. 68, 69, 70, 71 (VII, 4; VIII, 17; XIII, 35).

- 38 Thomson, pp. 70, 71, 72, 73 (X, 34; XI, 35).
- 39 Thomson, pp. 78, 79 (XXVII, 16): "If any freeman die intestate, his chattel property shall be distributed by the hands of his nearest relatives and friends under the supervision of the Church, saving to everyone the debts which the deceased (the spelling should be 'defunctus,' as McKechnie has it) owed him."
- 40 The Statute of Westminster II is 13 Edward I, c. 19, in 1285; the subsequent Statute, 31 Edward III, St. 1, c. 11, in 1357.
- 41 Thomson, pp. 78, 79 (XXXIII, 23). "Kydelli" are said to be still in use in Devon and Cornwall on the seacoast under the name of "Kettles" or "Kettlenets." Thomson, p. 214.
 - 42 Thomson, pp. 84, 85, 86, 87 (XLVII, 47; XLVIII, 39).
- 43 Thomson, pp. 86, 87 (L, 40; LI, 41). "And as soon as peace is restored, we will send out of the kingdom all foreign knights, cross-bowmen, mercenary soldiers, who have come with horses and arms to the injury of the kingdom." (McKechnie inserts a comma between "servientes" and "stipendarios," making both words nouns, he translates "serjeants and mercenary soldiers"—I think incorrectly.)
 - 44 Thomson, pp. 90, 91, 92, 93 (LVI, 44; LVIII, 45; LIX, 46).



List of Addresses

Delivered before

The Law Academy of Philadelphia

(The Academy does not possess a copy of those marked with an asterisk.*)

1821	Opening Address Peter S. Du Ponceau (1).
1824	Jurisdiction of the Courts
	of the United StatesPeter S. Du Ponceau (2).
*1826	Study of the LawJoseph Hopkinson (3).
1828	Practice of the Law Edward D. Ingraham.
1830	Practice of the LawJohn M. Scott.
1831	Early History of the Acad-
	emyPeter S. Du Ponceau.
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1838	Judicial History of Penn-
	sylvania
1839	Integrity of the Legal
	CharacterJob R. Tyson.
*1843	Law of Foreign Missions Charles J. Ingersoll (4).

^{(1) &}quot;An address delivered at the opening of the Law Academy of Philadelphia before the Trustees and Members of the Society for the Promotion of Legal Knowledge, February 21, 1821."

^{(2) &}quot;A valedictory address delivered to the students of the Law Academy of Philadelphia at the close of the Academical year on the 22d of April, 1824."

⁽³⁾ Published in the "National Gazette and Literary Register," November 22, 1826.

⁽⁴⁾ Published in "Public Ledger," October 25, 1843.

*1846 Practice of Law Pertain-	
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1849 Profession of the LawWilliam A. Porter.	
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1880 Politics in England and	
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⁽¹⁾ Published in "Penn. Law Journal," vol. 5, page 193.

⁽²⁾ Manuscript of this address was lost on the evening of its delivery. Martin's Bench and Bar, page 233.

1883 Origin, History and Ob-
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1917	Magna Carta William Renwick Riddell.

The English Speaking Peoples and International Disputes

by

The Honorable William Renwick Riddell, LL. D., F.R.S.C., &C.

Justice of the Supreme Court of Ontario

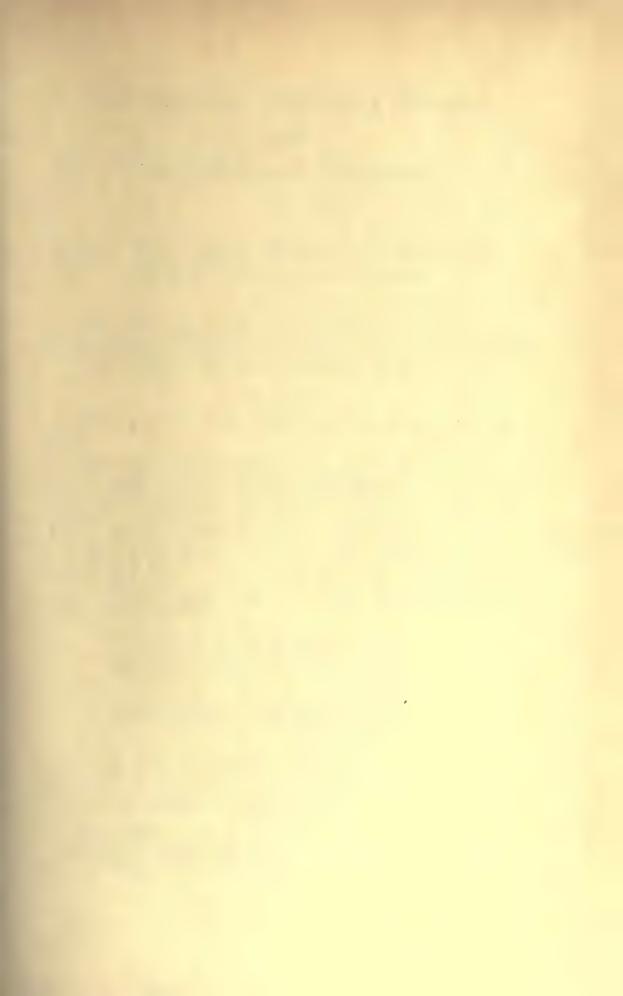
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A contribution to better International Relations







The English Speaking Peoples and International Disputes

by

The Hon. William Renwick Riddell, LL. D., F. R. S. C., & c.—,

Justice of the Supreme Court of Ontario

(The following article was written at the request of the Kiwanis Club of Buffalo, New York; it is an amplification of an address before the Club, November 9, 1921.)

There are just two theories of international relationships—

One is the doctrine of the autocrat, "Might makes Right, it is my right and therefore my duty to take all that my might makes me able to take, irrespective of what others may conceive to be their right." This may be perfectly honest, heartfelt and held as a very religion—no one can seriously doubt that the Kaiser really believed that he had been chosen by God Himself for the high and holy duty of subjecting the world to the might of German arms and of carrying into effect what he should decide. And did he not have his legion of professors and theologians,

"To prove by reason, in reason's despite, That right is wrong, and wrong is right, And white is black and black is white"?

The other adopts the thought of Pallas Athene, "Because Right is right, to follow Right Were wisdom in the scorn of consequence."

This is the principle of democracy, which insists that the rights of all are to be respected not alone the will of one, which does not admit any privilege given "By the Grace of God"—for of a truth it perceives that God is no respecter of persons.

The English-speaking peoples—I do not like the word "Anglo-Saxon," being neither Angle nor Saxon—the English-speaking peoples have adopted and put in force the latter

theory—while they may recognize the necessity of a large navy, an imposing army, they know that it is not naval strength, not military force, but righteousness that exalteth a nation. In their relations with the rest of the world and especially with each other, the great Republic and the mighty Empire have on the whole been governed by justice as it was given to them to see it.

Not that I would have you think that I contend that neither has ever been wrong—I am no more proud of the Chinese War than some of you of the Mexican War, while neither nation can boast of the foolish, unnecessary, fratricidal war of 1812 which was as destitute of results as of real necessity for its occurrence.

The method of determining international relations by the demands of justice seldom leads to war—disputes will, of course, arise by the nature of things, but these disputes are not at once put to the arbitrament of the sword—they are discussed from every point of view by statesmen and diplomats, and if the parties do not agree, the matters are left to the determination of an independent tribunal. That is the method pursued by the citizens of every civilized country in their relations with each other,—and the degree to which this method is pursued by private citizens is no bad criterion of the civilization of their State.

The longest international boundary in the world, four thousand miles long, stretching from the Atlantic to the Pacific, settled without shedding a drop of blood is a standing tribute to this method and an illustrious example of its magnificient success—for not an inch of it was beyond dispute and every inch might have cost a life.

Beginning at the East, the boundary line between the United States and British Territory is the river St. Croix.

By the Definitive Treaty of Peace made in Paris, 1783, it was agreed by Article 2 that the boundary at that point should be the River St. Croix. There were two Rivers known as the St. Croix, some nine miles apart; the one further west, also called the Schoodiac, Scoudiac or Schoodic was claimed by Canada (really Nova Scotia) as the true St. Croix while the United States, (really Massachusetts), with equal confidence claimed that to the east, the Magaguadavic, as the true boundary under the treaty of Paris.

George Washington sent John Jay, the Chief Justice of the Supreme Court, to London to negotiate and if possible to obtain a settlement of this and other matters in dispute: he was unable to settle this and certain other disputes, but a Treaty, 1794, (Jay's Treaty), was made by which it was in Article V, agreed that the King and the President should each appoint one Commissioner, they to choose a third (or if they could not agree, a third was to be chosen by lot), and the three Commissioners should determine which river was the St. Croix of the Definitive Treaty.

(1)* The King (i. e. the British Ministry) selected Thomas Barclay of Annapolis, Nova Scotia, who, born in the Colony of New York, had been a law-pupil of John Jay's, but adhering to the Crown in the Revolution had, when his cause was lost, gone to British territory and become a member and the Speaker of the Legislature Assembly of Nova Scotia. The American Commissioner was David Howell, Judge of the Supreme Court of Rhode Island—he mentioned to Col. David Barclay the name of Egbert Benson for the third Commissioner.

Barclay knew him and accepted him at once as a "cool, sensible and dispassionate third Commissioner." Benson had been judge of the Supreme Court of New York and was afterwards a judge of the Circuit Court of the United States.

These three lawyers made a unanimous award at Providence, R. I., in 1798 in favor of the Schoodiac.

Both these rivers fall into Passamaquoddy Bay which lies at the north east angle of Maine, but as Maine did not separate from Massachusetts until 1820, it was then at the north east angle of Massachusetts. It was at the south west angle of Nova Scotia or of New Brunswick after that Province was formed in 1786. There had been a dispute over some of the islands in this bay—Jay had not settled it and the dispute between Massachusetts and New Brunswick continued until the War of 1812. When the Commissioners at Ghent were settling the terms of peace in 1814, these islands and an island, Grand Manan, in the Bay of Fundy were discussed, and in the treaty of Ghent (1814) it was agreed by article IV to leave the settlement to two Commissioners, to be appointed by the President and the King respectively.

(4) The British Commissioner was again Col. Thomas Barclay; the American Commissioner was John Holmes, a member of the Massachusetts Legislature and afterwards Senator of the United States for Maine when Maine became a separate State in 1820. They made a compromise award at New York, 1817, whereby the Islands Moose, Dudley and Frederick went to the United States and the others to Britain.

^{*} The figures refer to the number of the arbitration, chronologically in the list of the twenty-one Arbitrations between the two countries.

An even more troublesome question was discussed at Ghent which was not so easily solved.

The Definitive Treaty of Peace by Article II had fixed the international boundary thus—"From the northwest angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands and along the said Highlands, which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the Northwesternmost head of Connecticut River; thence down along the middle of that river to the 45th degree of north latitude, from thence by a line due west on said latitude until it strikes the river Iroquois or Cataraquy" (which we now call the St. Lawrence).

The true St. Croix was determined under Jay's Treaty (Arbitration No. 1) but where were "the Highlands"?

That question was also agreed by the Treaty of Ghent, Article V, to be left to two Commissioners, one to be appointed by either party.

(5) Col. Thomas Barclay and Cornelius P. Van Ness, afterwards Chief Justice and Governor of Vermont, were appointed but they failed to agree.

The treaty provided that if they failed to agree, a reference should be made to some "friendly sovereign or state." In 1827 a Convention was entered into, under which the dispute was left to arbitration.

(10) William, King of the Netherlands, was chosen as arbitrator; he, in 1831, made his award but it was not satisfactory; and the line was afterwards fixed by diplomatic negotiation by Daniel Webster and Lord Ashburton—it is set out in the Ashburton Treaty of August 9, 1842.

It was hardly to be expected that there would be no dispute as to the islands in what may be called the international waterway. The Definitive Treaty of 1783 had fixed the line thus: "along the middle of said river Iroquuis or Cataraquy (i. e. the St. Lawrence above Montreal) into Lake Ontario, through the middle of said Lake until it strikes the communication by water between that Lake and Lake Erie, etc." i. e. along the middle of the Great Lakes and rivers. There were islands in the St. Lawrence, the Detroit and St. Mary's Rivers, and disputes arose concerning where the true line of the middle of the rivers ran. This was left to arbitration, also, by the Treaty of Ghent (1814) Article VI.

(6) John Ogilvie of Montreal was the first British Commissioner. He died of fever caught in the swamps near Amherstburg (in reality killed by mosquitoes) and he was succeeded by Anthony Barclay, son of Col. Thomas Barclay, so often named. The American Commissioner was General Peter Buel Porter of Niagara County, New York State, who had played a creditable part in the war of 1812 and who was in 1828 to become Secretary for War in John Quincy Adams' Cabinet. They made an award at Utica in 1822 which has been carried into effect.

The boundary from Lake Superior to the Northwestern point of the Lake of the Woods was fixed by the Definitive Treaty of 1783, Article II, but the Treaty went on to say that the international boundary should run due west from that north western point of the Lake of the Woods to the river Mississippi. Geography made a laughing stock of diplomacy for no Mississippi could be found west of this point. In 1818, a Convention was entered into whereby a line was to be run due north and south from the northwestern point of the Lake of the Woods to the 49th parallel and that line and the 49th parallel were to be the international boundary "from the Lake of the Woods to the Stony Mountains." West of the Stony (or Rocky) Mountains no line was fixed: disputes had already arisen. Britain claimed south as far as the mouth of the Columbia River between 46 and 47 degrees, N. L., while the United States claimed as far north as 54 degrees, 40 minutes. The Convention of 1818 by Article III left the country "Westward of the Stony Mountains" open to the citizens of both countries for ten years. Attempts were made in 1823 and 1826 to settle the line, but in vain, and a Convention in 1827 extended the ten years indefinitely. The election of James Knox Polk was materially assisted by the slogan "Fiftyfour Forty or Fight." He was elected but there was neither fifty-four, nor fight, for a Treaty was entered into in 1846 fixing the line "along the 49th parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island and thence southerly through the middle of the said channel and of Fuca's Straits to the Pacific Ocean." (Article I)

One would think that now all difficulty was over; but Geography again played havoc with Treaty. There turned out to be no less than three channels, any one of which might be called "the channel which separates the continent from Vancouver's Island," Rosario (or Vancouver) Douglas and DeHaro. The United States claimed that furthest west, De Haro, Britain claimed that furthest east, Rosario, and none so poor spirited as to claim the middle channel, Douglas.

In 1869 a Convention was entered into to refer the dispute to the President of Switzerland, but the Senate of the United States refused to ratify the Convention. American troops were landed by General Harney on the Island of San Juan, British Ships of war cleared for action and war was terribly near. It might have been precipitated by one fool. But the common sense and forbearance of both peoples brought about an arrangement for joint occupation until the title was decided.

(17) In 1871 by the Washington Treaty, Articles XXXIV—XLII, the dispute was referred to William I, Emperor of Germany; and he, in 1872, made an award in favor of the American contention.

Thus the last inch of the old boundary line was fixed: but in the meantime another complication had arisen. In 1867, the United States acquired Alaska from Russia and thus another boundary was brought into existence to be cared for. In 1892 a Convention was entered into for a joint survey, but surveyors and engineers do not settle disputed boundaries unless they have some description or instructions to go by. In 1903, a Convention was entered into to submit the matter to "six impartial jurists of repute." On the one side were named Lord Alverstone, Lord Chief Justice of England, Sir Louis A. Jetté, formerly Chief Justice of Quebec, and John Douglas Armour, Justice of the Supreme Court of Canada, and formerly Chief Justice of Ontario. Mr. Justice Armour dying, his place was filled by Mr. (afterward Sir) Allan Bristol Aylesworth, K. C. The American Commissioners were Elihu Root, (Senator) Henry Cabot Lodge of Massachusetts and George Turner of Washington. President Roosevelt asked Joseph H. Choate, the American Ambassador, to act as chief counsel but Choate refused. A majority award, the Canadians dissenting, was given in London in 1903 and the last scrap of international boundary was fixed. Canadians believed and still believe that the cards were stacked against them. but there never was even a suggestion that the arbitrators' award should be repudiated. A bargain is a bargain and a treaty is not "a scrap of paper."

* * * * * *

Reviewing the course of settlement from the east we find arbitration by two, by three—diplomacy after failure of arbitration by three and by one—arbitration by two, diplomacy, arbitration by one and finally by six—a variety of means all legitimate, peaceful and righteous—Plus ca change, plus c'est la même chose: not a drop of blood, not the tear of a widow, the wail of an orphan.

Next after territory come rights of one party in territory owned or claimed by the other.

By the Definitive Treaty of Peace (1783), Article III, "the people of the United States" were to have certain fishing rights on the Grand Bank, in the "Gulph" of St. Lawrence and "coasts, bays and creeks," of British Dominions; the War of 1812 was claimed by Britain and denied by the United States to have put an end to these rights—in 1818, a Convention was entered into whereby the United States renounced all fishing rights within three miles of British territory (except the Magdalen Islands, Labrador and part of Newfoundland). When the Reciprocity Treaty was agreed to in 1854, it contained an Article I, by which Americans received during the currency of the Treaty, the "liberty" given up by the Convention of 1818. A joint commission was agreed to determine where the Americans might fish.

(12) The British Commissioner was M. H. Perley, the American G. G. Cushman of Maine. John Hamilton Gray of New Brunswick was selected as the third by lot. Cushman resigned and was succeeded by Benjamin Wiggin, then by John Hubbard and finally E. L. Hamlin. Perley died and was succeeded by Joseph Howe of Nova Scotia. The award was not wholly satisfactory but both parties observed it.

The Reciprocity Treaty was abrogated by the United States in 1866, and consequently Americans were remanded to the Convention in 1818.

The Treaty of Washington of 1871 by Article XVIII restored the lost rights in consideration of certain rights given British Subjects by Articles XIX and XX: it was contended that the advantage given the Americans was greater than that given the British.

A Commission was agreed to by Articles XXII and XXIII to determine the amount to be paid by the United States.

(16) Sir Alexander Tulloch Galt who had been Finance Minister of Canada was appointed by the Queen, John H. Clifford by the President, and M. Maurice Delfosse, the Belgian Ambassador at Washington by Queen and President jointly—on the death of Mr. Clifford, Ensign Kellogg was appointed by the President. They met at Halifax and in 1877 they made a majority award (Kellogg dissenting) of \$5,500,000 against the United States.

Even this did not put an end to the troubles over fishing: the Convention of 1818 was not too clearly worded—at least not so clearly worded as that fishermen could not find a doubt in it. American fishermen continued fishing in places and by

methods considered by Canadians not justified by the Convention. There was constant friction, and many fruitless attempts at settlement were made. At length in 1908 it was agreed to have the dispute decided by a tribunal selected from the Permanent Court at the Hague.

(21) There were selected Hon. George Gray of the U. S. Circuit Court of Appeals, Sir Charles Fitzpatrick, Chief Justice of Canada, Dr. H. Lammasch, Aulic Counsellor and of the University of Vienna, Jonkheer A. F. De Savornin Lohman of the Netherlands and Dr. Luis Maria Drago of the Argentine Republic. They met at the Hague in 1910 and made an award unanimous in all but one point—in that Dr. Drago gave effect to a contention on the part of the United States which Judge Gray considered untenable.

Seals come after fish.

Before the sale of Alaska to the United States, Russia had asserted rights of ownership in the Behring Sea which both the United States and Britain denied. When Alaska became American, Congress passed legislation which was considered to prohibit the killing of fur seals in the Sea. The United States claimed the ownership of the Sea as a "mare clausum" although its mouth was 450 miles wide. Canadian sealers were seized by American cruisers 60 miles from land in the open sea. Some of the crew were imprisoned, some cast adrift at San Francisco. Not much more has often caused a long weary war; but the two English speaking peoples solve such matters otherwise. In 1892, a Treaty was made which, Article I, referred the "jurisdictional rights of the United States in the waters of Behring Sea" to seven arbitrators.

(18) Lord Hannen, Lord of Appeal in Ordinary, and Sir John S. D. Thompson, Minister of Justice of Canada, were appointed by the Queen; John M, Harlan, Justice of the Supreme Court of the United States and Senator John T. Morgan of Alabama by the President; Baron Alphonse de Courcel, a Senator of France, by the President of France; Marquis Emilio Visconti Venosta, a Senator of Italy by the King of Italy, and Gregers Gram, a Minister of State by the King of Norway and Sweden.

They met at Paris under the presidency of de Courcel and in 1893 made a unanimous award substantially sustaining the British contention.

Then came the question of compensation to be paid to the wronged Canadian sealers.

(19) This by a Convention entered into in 1896 was left to George Edwin King, a Justice of the Supreme Court of Canada and William L. Putnam a Judge of the United States Court of Appeals. These two eminent Judges did not need to call in the assistance of an Umpire but agreed (1897) on a sum of \$473,151.26, which was promptly paid by the United States.

It was not territory and territorial right alone which caused trouble—personal property was sometimes a matter of dispute.

And first as to Slaves.

When after the Revolutionary War, the British Troops left the territory of the United States, they took with them hundreds of persons who had been slaves. The Treaty of Peace, Article VII, provides that the withdrawal should be "without carrying away any negroes or other property of the American inhabitants." Washington over and over again demanded the return of the negroes taken away or their value—Washington was himself a slave owner—and as often the demand was refused, Britain claiming that when slaves fled to the British garrisons for safety, they became free and ceased to be "property" of the American inhabitants. Jay failed to obtain compensation for these negroes and they never were paid for.

During the War of 1812, many American slaves entered the British lines, many induced to do so by a Proclamation of Admiral Cochrane in effect promising them freedom. The Treaty of Ghent (1814) provided, Article I, that there should be no "carrying away of any slaves or other private property." Britain set up the same contention as before, that is, that the slaves had ceased to be slaves, and refused to send them back to a life of horror and despair. The United States insisted; and in 1818 a Convention agreed to leave the question to some friendly sovereign or State.

(7) The greatest expert in slaves, having more than any other Sovereign, the Emperor of Russia, was chosen and he decided, 1822, that the negroes must be handed back or paid for. Britain would not betray the trust of the unfortunates and she had to pay.

Therefore, a Convention was entered into, 1822, to determine the amount to be paid.

(8) First a Commission of one Commissioner and one Arbitrator on each side was to determine the average value of the slaves. The British Commissioner was Sir George Jackson,

an experienced diplomat, the arbitrator was John McTavish; the American Commissioner and Arbitrator were Langdon Cheves who had been Speaker of the House of Representatives and a Judge of the Supreme Court of South Carolina and Henry Seawell, Judge of the Superior Court of North Carolina. These four, 1824, agreed that the average value of slaves taken from Louisiana was \$580, from Alabama, Georgia and South Carolina \$390, from Virginia, Maryland and other States \$280. Then the number from each State had to be decided by the two Commissioners who were authorized to choose one of the arbitrators by lot in case of disagreement.

(9) The two Commissioners disagreed, considerable diplomatic correspondence took place and finally in 1826, Britain paid \$1,204,960 in full satisfaction of the American claim

for slaves.

Claims not unlike that just mentioned were made for illegal seizures of American Slavers and other vessels by the British; these and also certain claims by the British for seizure of British vessels before the declaration of War in 1812, arrest of British Subjects, etc. were the subject of considerable correspondence between the two Governments sometimes approaching acrimony. In 1853 all these claims were agreed by a Convention to be left to arbitration.

(11) The Queen appointed Edmund (afterward Sir Edmund) Hornby, a barrister of some note and later Judge of the Consular Court at Constantinople and still later Judge of the (British) Supreme Court of China and Japan. The President appointed Nathaniel G. Upham, sometime Judge of the Supreme Court of New Hampshire. These two tried to induce Martin Van Buren, former President of the United States, to act as Umpire but he declined and they selected Joshua Bates, an American carrying on business in London as partner in Barings.

The awards in favor of Britain amounted to \$275,000, in favor of the United States \$330,000.

* * * * *

When the territory south of the 49th parallel was taken west of the Rocky Mountains by the United States, it was agreed to pay the Hudson Bay Company and the Puget Sound Agricultural Company for their property taken south of 49 degrees North Latitude.

(13) The value was left to the arbitrament of Alexander S. Johnson and Sir John Rose. They chose as Umpire, Benjamin R. Curtis, once of the Supreme Court of the United States. But they had no need of an Umpire's services. They agreed upon \$450,000 to the Hudson's Bay Company and \$200,000 to the Puget Sound Company.

The "Alabama Claims" by the United States for damages due to Confederate Cruisers equipped in British waters during the Civil War were referred by the Washington Treaty of 1871, Article I, to arbitration.

(14) The Queen appointed Sir Alexander J. E. Cockburn, Lord Chief Justice of England; the President, Charles Francis Adams of Boston; the King of Italy, Count Frederic Sclopis a distinguished Judge; the President of Switzerland, M. Jacquis Staempfli, thrice President of the Swiss Confederation, and the Emperor of Brazil, Baron (afterwards Viscount) d'Itajuba, a University Professor of Law.

These five met at Geneva and in 1872 awarded the United

States \$15,500,000, (the Englishman dissenting).

There were other claims arising during the war, claims by the United States for the St. Albans Raid from Montreal, attacks by Confederates upon Northern vessels in Lake Erie, while Britain claimed for detention of vessels, destruction of property, etc. All these claims the Washington Treaty of 1871 by Article XII referred to a Board.

(15) The Queen appointed Russell Gurney, Recorder of London and Judge of the Sheriff's Court, the President, James Somerville Frazer, formerly Judge of the Supreme Court of Indiana; the Queen and President jointly named Count Louis Conti, Italian Minister at Washington. They disallowed, 1873, all the American claim and awarded \$1,929,819 to Britain.

Now we must go back to Jay's Treaty of 1794.

By the Definitive Treaty of Peace 1783, Article IV, it was "agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts heretofore contracted." Some of the States passed legislation preventing British creditors obtaining payment of their accounts and refused to repeal the obnoxious statutes. The United States was still a somewhat loose aggregation of separate States and could not compel the erring States to comply with the Treaty: Britain refused to give up the border posts Michilimackinac, Detroit, Niagara etc., until these debts were provided for. Jay's Treaty, 1794, provided by Article VI that the United States would pay these claims and by Article II Britain would give up the Posts.

(2) Arbitrators were appointed — Thomas Macdonald and Henry Pye Rich by Britain, Thomas Fitzsimmons and Col. James Innes by the United States. They chose by lot the fifth, John Guillemard of London. Innes died and was succeeded by Samuel Sitgreaves. The Board quarreled; the reference was a failure and the Commission was dissolved. By a convention of 1802, the United States paid \$600,000 in

full settlement.

American citizens had claims against Britain for illegal seizures under Orders in Council, etc. and these by Jay's

Treaty, 1794, were also referred to arbitration.

(3) Dr. John Nichol and Dr. John Anstey well known practitioners at Doctors' Commons were appointed by the King; the President appointed Christopher Gore (the preceptor of Daniel Webster, afterward Governor of Massachusetts and a Senator) and William Pinkney, afterwards Minister to London and Attorney General of the United States. These four selected by lot, Col. John Trumbull, the well known painter, as fifth arbitrator. Dr. Nichol resigned in 1798 and was succeeded by Dr. Maurice Swabey (also of Doctors' Commons). A unanimous award was made in 1804 under which Britain paid \$11,650,000.

We have reviewed twenty-one instances of references to arbitration, all but four (Nos. 2, 5, 9 and 10) wholly successful—two of the failures, Nos. 5 and 10, were on the troublesome question of the "Northeastern Boundary" and the others, Nos. 2 and 9, were due to faults of temper. All the failures were healed by the peaceful methods of diplomacy—and there was NO WAR.

Can any other nations show such a magnificent record? Settlement of thousands of miles of boundary, fishing and sealing rights, payment for slaves, for illegal seizure and detention, for everything which usually leads to war.

These nations have kept the peace for more than a hundred years and intend to keep it for a hundred hundred.

In 1817 by a simple Convention they agreed that the international waters shall not be polluted by the keel of a man of war; their far flung boundary has not a fort, not a soldier. An American is at home in Canada, a Canadian in the United States. We refuse to call ourselves aliens or strangers in the home of our brother.

It was to be thought that the example of two such nations might well be followed by all the world—two nations so strong that they need fear no foe, with a chastity of honor which feels a stain like a wound. What nation so proud, so strong, so great as should scorn to follow their illustrious example?

One tithe of the reasonableness, of the sense of justice, of the righteousness, of these our nations, would have saved the world the awful carnage, the appalling waste of the World War.

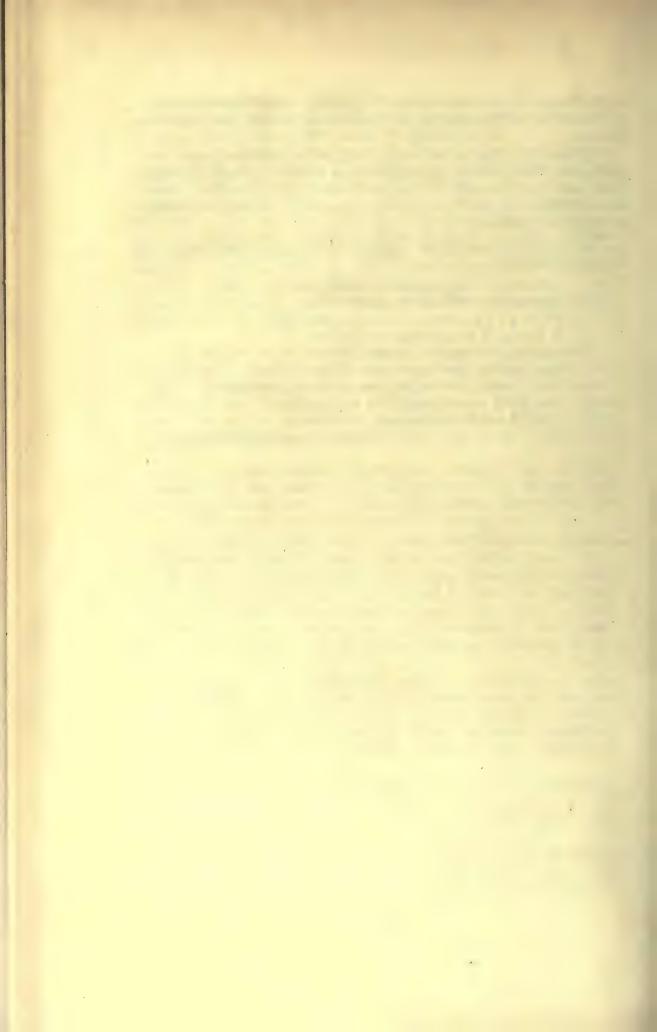
It is to be hoped that all nations may absorb the same spirit. But be that as it may, one thing is certain—these nations with kindred aspirations, kindred institutions, kindred

souls, must needs forever stand together, march together and if it must be, fight together for peace and liberty and righteousness.

There may be no written bond, no treaty on paper or parchment but our two great peoples are in all but external form one great union for the salvation of the world. That union remaining intact, civilization is secure; that union broken, woe unutterable.

It is to that Union that I am wont to apply the words of the American poet:

Sail on, O Union, strong and great,
Humanity with all its fears
With all its hopes of future years
Is hanging breathless on thy fate.
Sail on nor fear to breast the sea
Our hearts, our hopes are all with thee.
Our hearts, our hopes, our prayers, our tears
Our faith triumphant o'er our fears
Are all with thee, are all with thee.
William Renwick Riddell.





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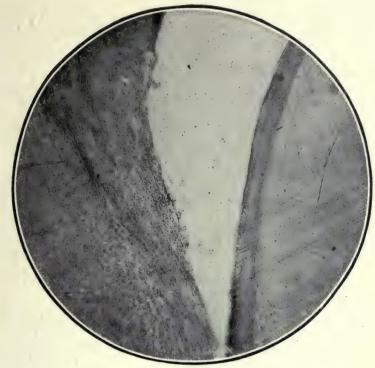


FIG. NO. 27.

In Fig No. 27 is an example of the fourth stage in the pathological evolution of a pus-pocket. Loss of tissue, denudation of cementum and pocket formation, have progressed into the pericementum. All the soft tissue facing the cemental surface is in a state of ulceration.

Graduation Address—The Royal College of Dental Surgeons and the Faculty of Dentistry, University of Toronto

CONVOCATION HALL, FRIDAY, MAY 13, 1921.

BY THE HONOURABLE WILLIAM RENWICK RIDDELL, LL.D.

I CONGRATULATE the members of the graduating class on attaining the degree conferred upon them by this University, and welcome them into the goodly fellowship of her Alumni. You have now obtained one, and that not the least, of the rewards of years of honest study; and you have a right to be proud of your new status.

You have the right, too, to be proud of your profession.

Until but the other day there were, outside the Army and Navy, only three professions, three civil professions, which a gentleman could follow, liberal and learned professions—the Church, the Law and Medicine.

Dentistry, three hundred years ago, had fallen from its high

estate and had become a trade; those who practised it, barbers and others, had a certain amount of tactual, mechanical, operative skill, but little or no scientific knowledge—they were mechanics, tradesmen, and not professional men—as the Greeks were wont to put it, they were cheirotechnai, handicraftsmen. It was not supposed that the trade of dentistry required a college education, a simple apprenticeship was sufficient as in the case of a bricklayer or plumber—and anyone who spoke of a dentist as at all in the same rank as a physician or a lawyer would have been laughed at.

It was not till 1840 that the Baltimore College of Dental Surgery was established, the first college in the world for the scientific and systematic education of dentists. By a steady course of evolution upward, the position of your science has been improved—the greatest universities have come to recognize its importance and its standing, and gladly grant their degrees to those who prove their ability and learning.

Dentistry in achieving the distinction of a profession and a science has not lost its status as an art—technical skill is as useful and as much prized as ever, mechanical expertness is as useful as ever—but now "bright-eyed science watches round," star-eyed science, organized knowledge, the mistress and directrix of modern civilization.

The whole concept of your mystery has changed and is changing. Beginning of old with the whole mind fixed on the teeth, as though they were entities entirely separated from and wholly independent of the rest of the body, the art applied itself to the topical care of the teeth—and ended there. "Until near the end of the 18th century, extraction was practically the only operation for toothache," and when views became broader it still was the individual tooth which was considered. It is a far cry from the rusty turn-key to Cotton's analgesia.

If the rest of the body was thought of at all, it was much in the same way as the body was thought of by some ancient and medieval philosophers—they are not all dead yet—as a resting place for something vastly more important. These desiderated a sound body as the temple of a sound mind—their motto was Mens sana in corpore sano; but it was the sound mind which they desired, and the soundness of the body was of importance only in its bearing upon the soundness of the mind.

The early dentist perhaps thought of Dens sana in corpore sano but it was the Dens he had his eye fixed upon—the body only was considered as the situs in which the dens stood and its soundness was not of importance.

"Science moves slowly, slowly creeping on from point to point" and just as in general surgery, so in dental surgery the conception of the interrelation of the parts of the human body has grown broader and more comprehensive.

In Charmides, that most delightful of all the Dialogues of Plato. Socrates assuming the character of a physician, tells the beautiful lad who was suffering from a headache that physicians of eminence had maxim that they could not cure the eve without curing the head without curing the whole head. The Greek had already arrived at the truth which even now not all our modern men, and still fewer of our modern women, fully appreciate, that a headache always means something more. But twenty-three centuries after the death of Socrates the thoughtful of us are almost standing upon the heights to which Socrates attained and we have at length got back almost to his principle—we cannot cure the tooth without curing the head or the head without the whole For sound teeth, the importance is recognized of regimen, diet, exercise, wholesome living, producing a general state of health of the body—while on the other hand, unsound teeth are now known to exercise a powerful effect for evil—perhaps a fatal influence—on the body generally: dens sana both requires and produces corpus sanum. The modern conception of the body as a collocation of cells each with a sort of individual existence might be expected to clash with this view, but the contrary is the case—it but strengthens the firm conviction of the unity of the whole—aegrum in uno, aegrum in omnibus; and in the like manner, the advance of your science and art naturally if not necessarily leads to differentiation in practice, to specializing in some particular branch of the profession. But this is not to separate you from the rest of those engaged in the healing art—there can be no clear line of demarcation between dentistry and medicine generally—unless you are content to be mere tradesmen, handicraftsmen, you must keep abreast of those in the other departments of healing and possess yourselves of their discoveries and advances as they of vours.

The ancient sage of whom the Pythia said not in vain that he was the wisest man, went further than his pretended authorities—quoting a mythical and imaginary Thracian, he said, "You cannot heal the body without healing the mind"—the healthy soul, mens sana connoted corpus sanum. That truth, too, we are beginning to appreciate; and if not as yet wholly in the individual, we see at least in the nation that health makes for purity and that the clean nation is sound in mind as in body—the clean nation, clean from disease, clean from infection, is the sane nation, the wise and prosperous nation.

All these considerations you must take with you; you must live and work accordingly, apply them in your association with your patients and your fellows.

You are now become of the great fellowship of University Graduates—but the winning of so great an honor does not make you the less citizens.

For more than fifty years connected more or less closely with

Universities and University life, I am more and more convinced that the future of the nation and of the world depends, as it should depend, on the University—on the output of the University.

While it is not to be expected that even those who receive the benefits of the higher and the highest education will be wholly exempt from the failings and shortcomings of our common humanity, they must needs be trained to think and to discriminate the superficial and ephemeral from the essential and eternal. In a University graduate, careful thought must go before adjudication, reasoned judgment before condemnation as deliberate and well-grounded approba-

tion before acceptance.

We have got far away from the old system of rule by a superior class or the superior classes. "Let them obey who know not how to rule," said the proud Plantagenet; and he read well the signs of his times. Now, those who know not how to rule are not made slaves with no part in the Commonwealth except to serve and obey; they choose those who are to rule, and in no small measure direct how they are to rule. We do not say "Jack is as good as his master," but it is because Jack knows no master. Still in the nature of things there must be leaders. It is said that during the evil days of the French Revolution a mob was hastening past a house where sat with a friend one much in the public eye. "Where are they going?" said his friend. "I do not know but I must go with them, for I am their leader," was the reply. Even in that crowd there were leaders, though perhaps not those ostensibly such—no movement is purely spontaneous. There always have been and there always will be-human nature remaining the same—men to whom their fellows look for light and guidance.

And where are they to be found? Not in the cloistered shade haunted by the recluse and the misanthrope.

Herodotus tells of the envoys sent to Delphi by the Dolonci to consult the Oracle concerning a ruler. The Pythia said "The first man who offers you hospitality, take with you." Miltiades, son of Cypselus, sat by his door in the cool of the evening, and, seeing them in the highway weary, invited them into his house, and so became their King. Axylus sung by Homer who lived by the side of the road was the friend to man for he loved all—Diomedes, the mighty master of the war-cry, slew him, but he was not a failure; his name and fame are eternal, embalmed in deathless verse:

"There are hermit souls that live withdrawn
In the place of their self content;
There are souls like stars that dwell apart
In a fellowless firmament;"

and they often are the very elect; but they must be few in number.

He who shuns his fellows may have a high mission, a lofty out-look, and he may be worthy of all praise. But there must be some to

mingle with the people, to know their needs at first hand, to take an immediate and not simply a mediate part in directing their thoughts and their aspirations. Those who do that, there must always be,

whether worthy or unworthy, whether for good or for ill.

Is that function to be left to the ward heeler, to the boss who makes his living by it, to the party hack with no thought above the immediate success of some scheme? It is not unusual to speak contemptuously of the politician, as though it were a degradation to take part in the government of the country; a disgrace to put into practice that for which our forefathers fought and died. A Macdonald, a Mowat, a Whitney, a Laurier—these may receive commendation, for—it is said—they were statesmen. Of a surety, he was wise who first said that the difference between a politician and a statesman is that the statesman is dead.

Some one must lead; who is it to be? "Freely ye have received, freely give." The inestimable gift of civil freedom, the highest privilege an honorable man may enjoy is yours as a birthright.

"We must be free or die, who speak the tongue That Shakespeare spoke, the faith and morals hold Which Milton held."

You have been educated in an institution where thought is free as the air you breathe, you have been trained to think, your whole education has been to cast off from your mind and souls the trammels of ignorance, you have been taught to fear God and eschew evil.

Noblesse oblige: and as "with the same measure that ye mete withal it shall be measured to you again," so with the same measure with which it has been measured to you, with that measure, mete ye.

This University was not founded simply to give information to intending ministers, or doctors, or dentists, or lawyers or engineers. Those who bore the burden and heat of the day when this University was but a young and struggling institution did not have in view simply learned savants, acute theologians, skilful surgeons, astute and subtle lawyers. These indeed they hoped for and expected; but their desire was for men and women who should indeed know their rights, and knowing dare maintain, but who should also their duty know. Brilliant graduates, graduates of compelling ability who should make their Alma Mater famous in their own fame, their faith gave them to foresee, and they have not been disappointed; but most, they wished graduates who should recognize their duty to their God, to the world, to their country, and their fellow countrymen.

And it should be the glory of a University that from its walls go forth the leaders of the people. If the blind lead the blind both shall fall into the ditch; it is the function of a University to supply those who can see, who can and will prevent their countrymen from falling into ditches that are all too common, ditches of ignorance, ditches of

prejudice, ditches of class hatred, ditches of party and international ill-will, ditches which lead to national discord or, it may be, to bloody devastating war. "He loved his fellow men" is the greatest praise which an nonourable man should covet, it that love has been made manifest in deed and not in empty rhetoric. If love of fellowmen be not the effect of University study and training, better that the University should cease to exist. It is for the public service, the public good, that public support is given to such institutions of learning, and the public should in common honesty receive the reward which is due.

The graduates and students of the Royal College of Dental Surgeons gave themselves in full measure to the service of their country in war—the Roll of Honour is long and illustrious, many gave invaluable time and labour, many gave health and strength, and some made the supreme sacrifice that Canada might be free. Are you not called upon to give yourselves in full measure that Canada may be great, a better place to live in? Your profession calls upon you to do your utmost that Canada should be clean physically, your proud birthright of citizenship calls upon you to help to make and keep Canada clean morally, mentally, and politically.

All the problems of government have not been solved; many remain calling for the clearest thinking, the renunciation of prejudice, honest and sincere determination to do the thing that is right. "Because right is right, to follow right," is "wisdom in the scorn of conse-

quence.'

I can see many such problems—the conflict between labour and capital (or rather between some who are thought to represent labour and capital); the old but ever new question of the tariff, for no tariff can be permanent, at least not without constant defence against constant attack; the problem of the immigrants and their uplift, upon the solution of which almost certainly will depend the prosperity of the Western and perhaps of the Eastern provinces as well; prohibition, whether it prohibits or when the evil spirit of intemperance is thought to be driven out for good has he simply gone and taken with him seven other spirits more wicked than himself and have they entered into the house empty and garnished and dwelt there, so that the last state is worse than the first?

These questions must be settled, not by prejudice or appeals to old established rules and customs, but by reason, by justice and eternal right—it is righteousness which exalteth a nation in every true sense. They who settle these questions are as deserving as the United Empire Loyalists who kept this land for Britain, and held us under the flag that braved a thousand years the battle and the breeze—as the statesman who won for us responsible government—as the Fathers of Confederation who conceived and realized our magnificent Dominion, self governing, but a proud member of the far flung British Empire, the greatest secular agency for good the world has ever known.

Leadership is required not only in the broad national and even in the less extended but still great field of Provincial affairs—much of the happiness of the people depends upon the municipality. These "sucking republics," as a former Governor called them, are the very nurseries of public spirit, of representative and responsible government—no man and no woman can afford to take no interest in the personnel of the governing body of the municipality.

There may be much to repel from active public life—there may be offensive personalities, rancorous invective, persistent misrepresentation, venomous threats—all the artillery of the worst type of politician. These are to be expected so long as human nature is constituted as it is—for there is a great deal of human nature in Canadians—but the example of a Sir Oliver Mowat, a Sir John Thompson, shows that they are not necessary weapons for a successful politician and that in the hands of others they are impotent to destroy the influence of those who can despise them.

And after all, such a price is not too much to pay for our prized freedom of speech which we hold only less dear than the freedom to live our own life in the pursuit of happiness.

It is infinitely easier now, as it was in Plato's time, to do harm than to do good—and it is not every one who can take up the challenge to public service—one must be strong in patriotism as in rectitude before he can defy evil speaking and evil thinking, detraction and defamation. But we can all help in some way, by upholding the hands of those who are earnestly seeking their country's good. Every one of you can if he will, find some way in which to repay at least in part the gifts of your country to you.—Freely ye have received, freely give.

Chicago College of Dental Surgery— Class A

A S we go to press we learn that the Dental Educational Council rating of the Chicago College of Dental Surgery is Class A. This information will be gladly received by the C.C.D.S. Alumni, who remember their Alma Mater with affection.

Canadians are particularly interested in the progress of the College because of Dr. C. N. Johnson's many years of association with the activities of the College. That Dr. Johnson is Students' Dean, and occupies the chair of Operative Dentistry, are sufficient in themselves to enlist the interest of Canadians in the progress of the Chicago College.

Alveolectomy

H. B. HARMS, D.D.S., OMAHA.

DO not wish to claim anything original for this paper. It is written solely from the information that I have acquired from a more or less serious study of the work of many men who are doing this class of work and the application of this knowledge to my own

practice.

In the study of this operation there does not seem to be any standardized method of operation or any set rule as to the extent of tissue that should or should not be removed. Radical operators tell us that in all cases the entire buccal and labial plate should be removed as high up as the roots of the teeth and the sockets entirely obliterated before bringing the flaps of soft tissue together. An operation of this kind is no doubt called for in some few extreme and unusual cases, but to practise such a procedure as a routine in every case will result in the ruining of many mouths, which is a serious proposition. When we see mouths a few months after such a radical operation with the tuberosities gone and the rest of the upper mouth as flat as your hand with the muscles actually pulling off the palate, it seems that some prosthodontist is going to have some trouble in fitting a denture. And when a man of the standing of Dr. R. E. Hall tells me that he has seen many cases which taxed his skill to properly fit the dentures, I wonder just who is going to take care of these patients.

The more conservative men are satisfied to give nature more of a chance to take care of some of this absorption of the alveolar process after the extraction of the teeth. This operation consists only of the removal of high points and places which cause under-cuts. The mouth is then left alone for a longer period of time until it is ready for the denture, or a second trimming is done several weeks after the first operation. This is not a bad procedure, especially for operators who are just beginning to do this operation. A little simple infiltration will often suffice for the second anaesthesia.

Between these two extremes we find the greater body of operators. On the one hand are the men who feel that a denture must be placed immediately, while on the other hand are the men who are satisfied to wait from a few weeks to a few months before constructing their dentures. This does not mean that base bite plates, or the like, should not be used in the meanwhile.

The operation as carried out in this office is briefly as follows:

The patient is anaesthetized with Nitrous Oxide and Oxygen in an upright position in the dental chair. You may call this a selfish attitude on my part if you wish. First, I prefer to operate on a patient in an upright position; second, I prefer to operate on an unconscious

SECOND

Annual Convention

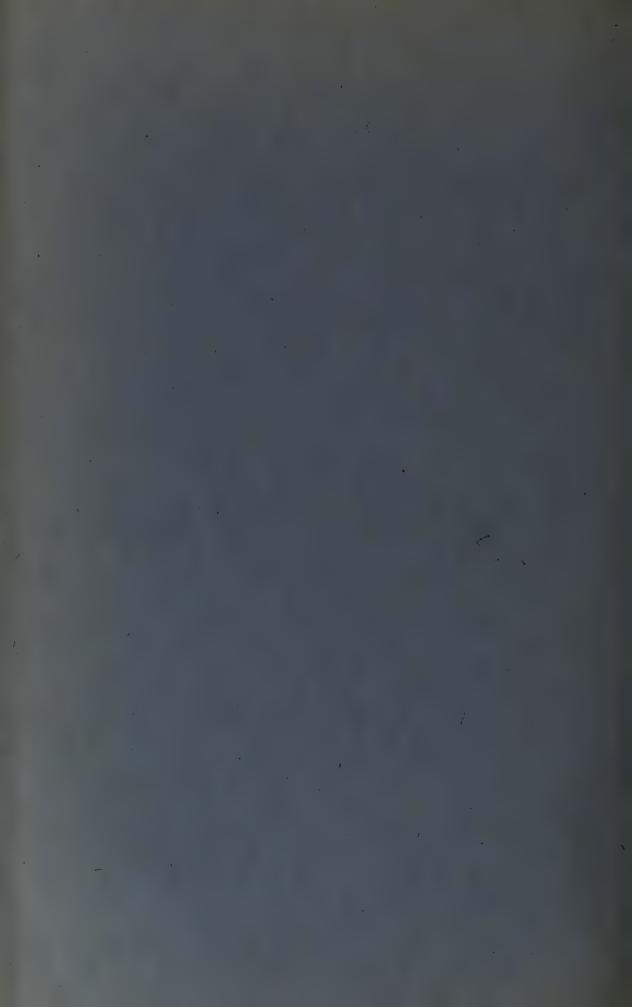
OF

Purchasing Agents Associations IN CANADA



Held at the King Edward Hotel, TORONTO

Saturday, May 14th 1921



Second Annual Convention

OF

Purchasing Agents Associations in Canada

MR. F. J. LUCAS occupied the chair.

MR. W. H. ALDERSON, President of the Board of Trade of the City of Toronto, welcomed the out-of-town members.

MR. OGILVIE, President of the Purchasing Agents' Association of Hamilton, responded to the welcome.

CHAIRMAN then called on Mr. Donagani, President of the Montreal Association, to open the discussion on "Is the formation of a Canadian Association worth while and opportune?"

MR. DONAGANI:—Anything is worth while that is going to bring desired results. We have not had an opportunity in Montreal to know just exactly what is in the minds of the Toronto and other associations, but we firmly believe that an Organization of Purchasing Agents in the Dominion is worth while, because at the present time we are duplicating work in each Association, without any centralizing point for disseminating information gathered by individual Associations.

I might say that every member of the Montreal Association is always a "Made in Canada" buyer so far as possible. But there are basic commodities where one Canadian manufacturer's finished product is the other man's raw material, and many basic commodities at the present time must be purchased in the United States and other countries, and our contact with the National Association has been such a source of education that whilst a Canadian association of some kind or another is advisable, I think that we would lose a lot of useful work already done by our contact with the National. It should be fully borne in mind that each purchasing Agent in this country can do more for Canadian manufacturers than any other Executive in his firm. Many executives are members of the C.M.A., but too busy to watch the details of a Purchasing Department. The large supplies take care of themselves but it is the every day items in which the Purchasing Agent can be of greatest assistance to Canadian manufacturers. I know members of the Purchasing Agents' Association in Montreal who have gone out of their way to point out to manufactures lines which he has purchased in the United States and which could be made in Canada.

For the benefit of the members of National Executive present I would like to point out that we in Canada have got problems that you have not got; we have legislation being enacted all the time, taxes, tariffs, which vitally interest all purchasing agents in Canada, but which do not concern in any measure the Purchasing agents of the United States. So

that is why I think that an association of some kind should be formed in Canada, but that we should still retain our connection with the National Association.

CHAIRMAN then called on Mr. Ogilvie to continue the discussion.

MR. OGILVIE, HAMILTON.-Is the formation of a Canadian Association worth while and opportune? It seems to me it is. I know the formation of our local association has been worth while although it took over two years. But if we are going to get the best possible out of our Associations, we, as Canadians, can only do so by having an Association of our own, whether we are affiliated or not with the National, personally feel that we should stick to the National. However, it is a subject which will bear a great deal of discussion in order to bring out the various points in favor or to the contrary. Some may say that at this particular time it is not advisable, as we are practically not buying. and for anything that we do happen to want it is no trouble to procure it, as it is a buyer's market; but it is also true that any good business organization takes advantage of a quiet spell to perfect its organization and build up a staff that will take care of the business when the rush comes. So I say, now is the time for us to get our organization under way and lay the foundation for the future while we have the time to spend in getting the organization in shape. And thus we can do our bit towards furthering the commercial interests of this Canada of ours by spending time in the interests of this Association and studying the problems which are peculiar to the Canadian purchasing agents. Such matters as standardization work, in connection with catalogues and invoices, price lists, has been gone into very minutely in the United States, but so far as Canada is concerned there has been practically nothing done, and I think it is high time there was something done, and this is an opportune time, and manufacturers will take more notice of what we are trying to drive home-the standardization of these catalogues, invoices, etc., and I think it will have a very far-reaching effect, so that when we do get busy we will have things so systemized that we will be well able to handle all that is brought before us.

Then there are matters in connection with the Tariff which naturally the National cannot see in the same light as we do, and we cannot therefore expect much help from them along those lines. But if we were thoroughly organized we could by our united efforts help to get recognition, and thereby remedy some of the great faults which now exist, and in such matters I am sure we would be aided by the C.M.A. I think if we had a Canadian Association we would add to our membership greatly as there are a number of firms, when you mention the fact that we are linked up only with the National, do not seem to care for the Purchasing Agents membership whereas if we had a Canadian Association, even though it is linked up with the National, they would be more likely to see the advantages.

We have many problems which are not just in accord with the National and we can only remedy our own troubles by having a Canadian Association. Take the case of the Employment Committee's work. I know of two or three who are now out of a position and I have been trying to place them in positions, and I think it would be somewhat easier if we had a Canadian Council for that purpose.

Of course there are many difficulties in connection with the formation of this Association, as our numbers are rather small at the present time, but I think if we had our own Canadian Association that the membership would increase. Then of course there is the difficulty in finding a real good man to look after the duties of secretary, and a very capable man would have to be selected to do so. I personally hope to see steps taken towards the formation of a Canadian Association today, and I hope that we will still retain our standing with the National.

CHAIRMAN then called upon Mr. A. E. O'Neil, Ottawa, to continue the discussion:

MR. O'NEIL .- I cannot add much to the remarks of those gentlemen who have preceded me except a few words as to how we in Ottawa feel in connection with affiliation with the National Association of Purchasing Agents. At the time of forming the Association in Ottawa a great many of us were of the opinion that we were losing to a very great extent our identity as a Canadian organization, and while we admitted many points in favor of affiliation we felt that without knowing the ramifications of the National Association we were not in a position to accept a set of bylaws, the fundamentals of which we might not wish to remain unaltered during the future. And while we quite admit that the National organization is a splendid institution in every way, it seems to us in Ottawa that our fears were only too well grounded, for as far as we can judge, the National Association is more interested in matters of importance to the Purchasing Agents of the United States than to us in Canada. Now please do not entertain the impression that I am trying to belittle in any way the work of the National Association for such is far from my thoughts. We are all aware of the marvellous progress they have made during the short time they have been in existence, and wish them success in every step they may take toward the advancement But it seems to us that if we as a Canadian Purof their ideals. chasing Agents' Association wish to succeed we must conduct our business from a Canadian viewpoint.

Compare the United States and Canadian Trade indices, and you will see at once the preponderance of products manufactured in the States as against those in Canada. You will see at once the disadvantages we Canadians would be under in attempting to build up our industries and make Canada a good place in which to live.

Take the matter of coal, that commodity which has kept most of us from our peaceful slumbers after we have retired to our cots. Perhaps some of you are not aware that we have in Canada known deposits of coal approximately of $1\frac{1}{2}$ billion tons—we produced during $1920\ 17\frac{1}{2}$ million tons, we imported 20 million tons, and exported $2\frac{1}{2}$ million tons—making a total consumption in Canada of 35 million tons. Figure that out at the present rate of consumption and you will find we have in Canada enough coal to last us for the next 44,000 years.

But coal is only one of the great natural resources of Canada, and we as Canadians should see that our own resources are properly developed in order to make Canada a good place in which to live and work.

It seems to me that if we as a purely Canadian Association could place matters of importance in front of our Government, and they would realize the fact that we were a purely Canadian organization independent of any outside affiliation, that our only aim was to do our share in the helping toward the making of Canada a good place in which to live, we could get more help.

As for the time being opportune in which to form a Canadian Association; I can say that after the strenuous times through which we have passed, after the magnificent manner in which the Government and the manufacturers handled our share of the world's greatest problems, many of which were unknown until we were suddenly confronted with them—with such men at the head of Canadian affairs, the time has come when we should tackle the formation of a Canadian Purchasing Agents' Association.

Therefore let us form a purely Canadian Purchasing Agents' Association, link up our efforts with the Government and the Canadian manufacturers, and I am sure the results obtained will be a source of pride to each and everyone of us.

CHAIRMAN then called on Mr. J. Nicholson of Toronto to continue the discussion.

MR. J. NICHOLSON, TORONTO.—Mr. Chairman and Gentlemen; I think the best evidence of the fact that we need a Canadian Association is shown by our registration today. There are boys from a number of There are members Ontario towns here where there is no Association. here from Kitchener, visitors from London, St. Catharines and Merritton, and from towns all over Ontario, where today they have no chance of getting in touch with any Association which can be of any use to them. I think we should have a Canadian Association so that these towns could be organized and that these men could be gotten into Associations at central points where they could derive the same benefits that we have been getting. This thing is going to cost a lot of money and it is going to mean a lot of work to somebody, but it is going to prove worth while, and one of the best evidences of the response we will have in organizing is the number of visitors we have today. The National on the other side had a big job in organizing over there. They were up against the same thing in every state of the Union that we are up against in Ontario, in getting the small towns organized and getting members in from all over, and I think we could very well get ahead with this thing and reap great benefit from it. I don't know the exact cost. I believe that the Committee appointed by our Toronto Association have investigated that. It runs up into lots of money. My recollection is that the figures were about \$10,000 for a year. I will leave the question as to how that has to be raised to the man who is going to follow me.

Chairman: As Mr. Nicholson has touched on a point which is of vital importance, namely the expense of operating, I will ask Major Bell, who was a member of a Toronto Committee of Investigation, to enlighten you.

MAJOR BELL: The Toronto Executive considered the matter, (as undoubtedly have the other Associations in Canada, of forming a Canadian Association) and selected as "goats" Mr. Sedgewick and myself. We went after information but the sources were rather few at that The New York Association and the Oklahoma Association were the only ones then employing paid secretaries. The New York Association estimated their expenses as \$10,000 a year. Oklahoma were a little more moderate at \$9,000. Here in Canada, possibly, by virtue of the adverse exchange rate and the fact that the Canadian dollar is worth less than 90 cents in American money, and possibly because we are a little more careful over here, I think the expense in Canada would be lower. I think if we were to organize some central co-ordinating body, for the benefit of all the Canadian associations, we will naturally have to have a paid secretary with organizing ability who can increase membership in the present existing branches, and organize new The men who are active in the Toronto Association will branches. agree with me that we could within a few months increase our membership by 50 per cent., if we could get a man to interview executives and purchasing agents personally. I expect Montreal is in a similar position, and Mr. Ogilvie tells me Hamilton is.

In Ontario I think we could organize an association with head-quarters in London, having the surrounding towns as contributing territory. We could establish another Association in the border cities, Windsor, Walkerville, Sarnia, for in that neighbourhood are many large industrial concerns, some branches of United States concerns having membership now in the Detroit Association of the N.A.P.A. Further, I think in the Niagara Peninsula, another industrial hive, an Association could be established and maintained.

Going further East—with Peterboro as a centre—we have Lanark, Renfrew, etc. There are a number of industries in the Eastern part of the Province who should be members of the Association.

Along the Lake shore there are Oshawa, Gananoque, Brockville and other towns with Kingston as a possible central meeting point that could be organized.

There is a possibility of establishing an association in Eastern Quebec, either at Quebec City or Three Rivers. Almost certainly we could find some central point in Nova Scotia—and New Brunswick—to maintain a Purchasing Agents Association. In both St. John and Halifax, whilst industrial activity is not so great, the exporting firms are of considerable size and their purchasing organization is the most important end of their business.

So much for Eastern Canada. We have not taken into consideration at all the Prairie Provinces nor the Pacific Coast. In six months quite easily an energetic organizer could cover the ground from Ontario East, and in that time could bring into the Association probably 200, possibly 400 new members. The approximate cost in so far as Mr. Sedgewick and I figured out in employing such a man, paying him \$250 a month with travelling expenses of \$10 a day and supplying him with a stenographic force, would be about \$10,000 a year considering the fact that of course he would not be on the road all the while. Six months time would involve an expenditure of \$5,000, and we consider that sum as the amount necessary to have in sight as the minimum expenditure to thoroughly organize Eastern Canada.

Chairman: Gentlemen, the subject has been fairly covered and I am going to place it open for discussion among the members, and ask Mr. Webster, Second Vice-President of the N.A.P.A. to speak.

MR. T. P. WEBSTER: I was hoping that the Chairman would call upon the man who is going to tell us how we would raise that \$10,000 before calling upon me. So far there has been such a unanimity of opinion that we should form a Canadian Association, that I take it that we all will put up both hands so far as that is concerned. We should have some organization where we could centralize on these matters which pertain particularly and peculiarly to affairs in Canada. I might possibly say that there is danger that we are over-estimating the value of a purely Canadian Association or an Association in Canada which would be affiliated with the National. If it were going to cost \$10,000, would the benefits to be derived be sufficient to justify such an expense?

As for pulling out from the National, I believe that it would be a great mistake at the present time.

In the matter of standardization: Mr. Ogilvie referred to Standardization. I don't know what you have done up here. I am glad to report that a number of Montreal firms have put out their catalogues to the standard size. That is a beginning and we are trying to encourage that and push it along all that we can.

Mr. Ogilvie also referred to the matter of exchange. Now I am one of those—and I believe I have most of the purchasing agents in Canada behind me—that buys all that he can in Canada. Wherever it is possible for me to buy "Made in Canada" goods I believe in building up our own industries, our own country.

Mr. O'Neil referred to coal. Canada has one-seventh of the coal supply of the world but what are we doing with it? We are not doing much, because it is not placed where we can handle it. Most of it is in Alberta and the West and you can't carry it across the continent. You cannot possibly say you will not import coal, because our own coal is not located where you can get it to your plants.

Mr. O'Neill also referred to the strength of the National Association being on the other side of the boundary. Now, Gentlemen, I don't see where that becomes an argument in favor of secession from the National. To me it is a very good argument in favor of remaining with them, because we as the weaker member must surely draw strength from the larger body. It is a question of personal contact, helping each the other, helping to place the Purchasing profession upon a higher, a better basis, and the ethics of buying on a higher plane. When I started in the Purchasing game some 23 years ago, God knows it needed quite a bit of boosting. The plane was mighty low. Today we find men of the highest calibre, men of the highest standard of ethics, buying, and while we make a joke of the little drink and the booze stuff and that kind of thing, nevertheless buying is not done today, as it was done years ago, with one foot on the third rail. (Amusement).

Mr. Nicholson spoke of the organization of the local towns and the necessity of a purely Canadian organization to organize those local towns. I don't say the National have found it utterly unnecessary to assist the towns. But the work has gone along and made wonderful strides in the United States without a paid secretary. Now I am not knocking the idea of a paid secretary; only that \$10,000 has rather staggered me, and I am just wondering if it is not possible for us to imbibe enough enthusiasm and sacrifice enough time to be able by ourselves and without the assistance of any outside help, to organize these towns and make local organizations there. Possibly we would grow a little more slowly, but by the time that business gets back to the big rush once more and while we have more time for outside interests it may be that we will have Canada pretty well organized and have the purchasing profession in Canada on the basis on which it should be.

CHAIRMAN here asked Mr. Marshall, of the C.M.A., who was present, for a little information as to the C.M.A.

MR. MARSHALL: If I say anything at the present juncture it will be merely to outline a number of things that the C.M.A. has done as a Canadian organization, and not so much with specific reference to the Canadian Purchasing Agents' Association.

In coming before you today, I want to outline some of the relationships the C.M.A. has with other organizations. We have been working very strongly for purely Canadian organizations and the Canadian Manufacturers' Association is a purely Canadian organization. But at the same time we maintain constant correspondence with the National Association of Manufacturers and with the Illinois Manufacturers' Association and a number of other industrial associations of the same character in the United States. There is no recognized affiliation, but if we develop a good line of organization work that might be applied in the United States we hand over the outline and the details to these National Associations on the other side, and at the same time we receive from them the benefit of ideas that they develop.

Then with regard to Canadian organizations: in some respects that is a little different and more limited. For instance, in our own office in Toronto we have the traffic man of the Canadian Pulp and Paper Association. He looks purely and simply after the traffic work of that Association and is not subject to any control by the Canadian Manufacturers' Association.

Another point that you might be interested in is that we have just recently instituted what is known as the Canadian National Export Club, and the Branches of that Club are now being established in various places. On Tuesday of this week the men in Toronto and the surrounding district formed an Export Club of Toronto, and I heard the other day from a man in London who is going to follow along the same lines

and undertake the formation of a Club in London. There is no question about it, that Hamilton, Ottawa, Halifax and St. John and a number of other centres in Canada will organize similar Clubs in future. heard some of the discussion that has been going on about the question of forming a purely Canadian organization. I don't want to enter at this time into the subject at all, but to simply explain that naturally as a Canadian organization we are inclined to think that Canadian organizations can do a great deal of work for their own people. It has seemed to me that an outstanding feature in Canadians has been a diffidence in believing in their own strength, and it has been something that the war period did more to overcome than any other event in the recent past. Everybody knows the type of ability that Canadians showed in all phases of war work and we can go ahead on a peace basis just as well. That is the only point that I wanted to go into at this time. is any way in which I can be of further service to this meeting I am absolutely at your disposal.

CHAIRMAN then asked for further discussion from the floor of the meeting.

MR. McKINNON, Goodyear Tire & Rubber Co., Toronto, pointed out the necessity for consideration of the problem from the point of view of ultimate benefit to the members' firms rather than from a patriotic standpoint.

MR. HASKELL, Southern Power Co. of Montreal. I have had a little experience in the last six months in forming an Association, the scope of which is about the same as I see it. We laid out a budget of \$8,000 for one year. We are following that budget very closely. This Association has been running about six months and it has taken us about four months to get under way, and it is my opinion that a spasmodic effort of six months would be of practically no avail. we would form a few Associations, but I believe that the Associations already formed can do the same work that a paid secretary at a cost of \$5,000 can do. I do believe that we should have a Canadian Council and work in conjunction with the National Association. The thought of breaking away from the National Association appeals to me as a thing that we should not give any serious thought to at all. There is no reason why we should let an Association that has spent years in getting an organization together go by without our profiting by their experience. I am somewhat in touch with the work of the National Electric Light Association and its Geographic Section, the Canadian Electrical Association. They work very harmoniously together. The National has a membership of about 2,000 and the Canadian Electrical Association of perhaps 200, and yet the Canadian Electrical Association maintains a part-time secretary. Then too, the Canadian Electrical Association, while not a tremendous organization, is recognized by the Government of Canada, and I believe that any Canadian Purchasing Agents' Association can make itself recognized by the Government. And we do not have to draw away from the National Association, as was suggested, I believe, by the Ottawa speaker, in order to get recognition by the Canadian Government and other Canadian organizations.

MR. LANGLORD, NEW YORK ASSOCIATION: Now it is always a pleasure for me to mix in with people who have the interests of the Purchasing Agents at heart. The keynote struck so far in favor of forming a Canadian Association, it seems to me, has been patriotism. Now if that is the object it is a separate thing entirely. The Association of Purchasing Agents is for the elevation and proper recognition of the Purchasing Agent, and it does not make any difference which side of the line that purchasing agent is on. If we can elevate that profession the individual is going to be benefitted and his company is going

to be benefitted. We have our hands full to get that purchasing agent the recognition which we believe he deserves. For the past seven years I have been living in the atmosphere of the purchasing agent. I have seen the growth of the profession. It has been a real satisfaction to see the different plane on which the purchasing agents work to what they did seven or eight years ago. The greatest benefits have been brought about, not by the local Association, but by the larger body. Let me give you a concrete case.

It is not so much for us to review what we have done—but it is what we are going to do in the future. In dealing with salesmen, if you can bring home the knowledge that you are acting on a plane of conduct that the other purchasing agents have adopted you will impress them in a way that you could not do singly.

I happen to have a contract on my desk for 40,000 booklets, and this largest firm of catalogue makers had gone on record as refusing to make any catalogues of a different size than those recommended by the National Association of Purchasing Agents.

We need your help, you need ours, and we should all work together on that basis. You should have your own Exchange Bureau. But while you can take advantage of some of the points from the Exchange Bureau that we have, I would advise you to have an Employment Bureau of your own.

Another thing is our official organ. We are very proud of that magazine. That magazine will be hurt if the support of any section of the continent is withdrawn from it. Now, as I said, the important consideration for our Association is the boosting of the individual member and the profession. If they know that the purchasing agents all over the country are reading the same magazine, have the same contracts before them, it will put the backbone behind them which all business men have needed in the past.

CHAIRMAN then asked Mr. Chandler, the President of the N.A.P.A.. to address the meeting.

MR. CHANDLER: Gentlemen: I am certainly glad to be in Toronto again. I feel this is a discussion in which the National Association should not take a prominent part. Someone spoke about the question as to whether this was the time or not—which reminded me of the fellow who did not think it necessary to fix his roof, which was in need of repair, when it was dry, and could not fix it when it was wet.

Now when you are in a buyers' market, is the most favorable time to consider such a thing if it is ever going to be considered.

A fact which appeals to me very materially, is that the Canadian members of the National Association should know and do that thing which is in their best interests, whether that hurts the National or not. The National should have nothing to say as to whether you withdraw or not. Because if you retain your membership in the National, against your best interests, the National and your members will both suffer.

One of my thoughts and hopes has been that we could form regions on the entire North American continent, because until a few months ago when I learned here in Toronto that this question has come up, I had never thought of the possibility of Canada as a separate unit, for I had thought of the continent as our basis of operations.

Now we have emphasized the fact that the prime function of a Purchasing Agents' Association has been to establish the profession and elevate, and reference has been made to the improvement of the profession since our organization. Some of that has been natural evolution and some has come about through the efforts of the Association. Naturally the Canadian members have done proportionately just as much as those in the States. The honor belongs equally everywhere.

One thing, which did not appear to be very clear to all of you, is the Committee formation, which is in its infancy, but is prospering very materially, and making very good progress, and that is whereby Toronto, Montreal, Hamilton and any other Canadian Association, as well as every single Association in the States, has a member on every Committee of the National Association.

The question of Canada and the We wanted a coal contract. United States never entered into our thoughts at that time. member of the Fuel Committee was invited to attend that Conference in That point was selected because it permitted getting there at the lowest possible expense to the greatest number, and it is a significant fact that out of 35 Associations having members on that Committee there were 28 present. This goes to demonstrate the democratic nature of our Committee organization. The New Associations Committee has several councils, the others so far have only one. believe that thought of separate councils may help in your deliberations In other words there is a South Eastern Council of the New Associations Committee composed of three members of the New Associations Committee. Those members are given certain states in which to push new associations. Then there is the South Western Council and the Pacific Council. There has been some suggestion as to a finer combing of the country, and it is quite likely we should have more councils and a smaller territory in which to work, but I cite that merely as a possibility for formation whereby the Fuel Committee, for instance, has three members in Canada-Toronto, Hamilton and Montreal-but every time a new Association develops in Canada, automatically they should and are expected to appoint a member on that Fuel Committee. if those members of the Fuel Committee in Canada see any advantage in having a Canadian Council of the Fuel Committee, I think it would be a splendid thing to have. But the having of it should be on the principle of whether it would be worth having to Canada or Canadian mem-That Council then would have a participation in the deliberations of the entire Fuel Committee, to get all the benefits which accrued from that entire committee. At the same time it is free to undertake anything it chooses in the interests of its members. And to my mind that same line of organization could be carried out in all of the committees of the National Association.

Now then if your Canadian members choose to develop a Canadian Association—and there is nothing to prevent that being done—per-

sonally I would favor it very greatly.

I think anything that you undertake should be so conservatively designed that you should figure on increased expenditure as you expand rather than on diminishing it. If you begin on an expenditure of \$5,000 you should be prepared to spend \$10,000 during the second six months if development warrants it. And I think it would be a serious mistake to start an expansion which you can't maintain because the psychological effect on the members of such a proceeding would be just the same as a big Chicago and Detroit Convention,—they work up a fever and then suffer a relapse, and then they can't get anybody to attend meetings after that. I would strongly advise against a mushroom membership.

When it comes to a paid secretary: I believe in paid secretaries, but if I had only so many dollars I would rather put that money on a public relations man. I believe the biggest expansion of the purchasing profession has not been so much what we have done as the fact that the people of the world and Canada and the States have learned to know what we have done, what we are thinking about,—they have learned to take our measure. Now we might have done all these things but if the public had not known of it we would not be in the position we are in today. But if you want to expand in Canada you should do, as we are doing throughout the continent, through publicity, letting people know what we stand for, what we are trying to accomplish as well as

what we have accomplished in the pas. And our accomplishments in the past are negligible undoubtedly compared with what we can do and with what we will do.

If you are desirous of forming a Canadian Association, which it seems the proper thing to do and one which I favor personally, there is only this to be borne in mind,—whether you stay in the National or not, that any time when that affiliation ceases to be of value to the Canadian Purchasers Association, I know fully well it will be terminated. But for the present I can't see that it is to the best interests of Canadian purchasing agents to withdraw themselves from the profits which they can derive from the things which we as the larger association can get together.

MR. B. H. JUDGE, PRICE BROS. & CO.: There is just one point I want to bring out and that is, who you are working for,—whether for the National Association or for the firm. If you are working for your firm, you will buy some things outside of Canada for you must in order to buy at the lowest market price; therefore, we need to know the markets, not only in Canada, but of the States and other parts of the world, and if we can get any information from the National or give them any we should stay by it.

MAJOR BELL:—Taking into consideration the expressions of opinion of the various speakers, there are two alternatives left—either to adjourn and continue the discussion at our afternoon session, or to consider a resolution now which will possibly condense the matter after the ventilation which has been given it. It would be impossible to take anything more than an expression of opinion from this meeting. We are a convention of the Purchasing Agents' Association in Canada. Naturally this convention being held in Toronto, there are almost a majority of those present from Toronto. It would therefore be unfair to our sister associations in Montreal and Hamilton to take it on a vote of members present alone. We have also a number of visitors, and it would be discourteous to exclude them. I would suggest that a standing vote only be taken on the resolution which I propose to bring forth, namely:

That a Committee consisting of two members from each of the four present Associations in Canada be appointed by the Associations, together with a chairman appointed by this convention, to confer on the organization of a Canadian Association and to bring in recommendations for discussion by each local association not later than September 1st.

Mr. Bell continued: My purpose in bringing forward this resolution, Mr. Chairman, is that all branches of the various organizations can be fully advised of negotiations and conclusions reached by this Committee, and the Committee be not empowered to take action, other than to have the locals discuss whatever they transmit.

This motion proposed by Mr. Bell was then seconded by Mr. Judge. The motion being put by the Chairman was unanimously carried.

CHAIRMAN then brought up the matter of the appointee for the Chairmanship of the Committee.

Mr. Bell suggested that a fitting appointee as Chairman would be Mr. Webster of Montreal, and so moved.

Seconded by Mr. Ogilvie, and carried by unanimous consent of the meeting.

Chairman declared Mr. Webster appointed Chairman of this committee.

The meeting adjourned.

Afternoon Session

The Chairman, Mr. Lucas, reconvened the convention at 2.30 o'clock, calling on Mr. S. R. Parsons, for his address on the Industrial Outlook for Canada.

MR. S. R. PARSONS: Mr. Chairman and Gentlemen: I assure you it is a great pleasure to be here this afternoon. I believe that an organization of this kind is destined to do a great deal of good, not only in the mutual intercourse, but such organizations as this have always tended towards a broader national view. I care not what business organization you come into association with, you will find one of the results of that organization is a broader national spirit. And there is nothing that we require more in Canada today than to look at our problems from a broad national standpoint, and to feel that we are facing the entire situation as citizens of a great commonwealth. In the old days we used to leave our national questions largely to the politicians. Whether it is that today we have not the same confidence in our politicians, or that we feel more keenly that we are a part of the great show and that we should have some part in shaping the policies of a great country—we are certainly coming to a point where the business man in particular, is taking a greater interest in national affairs.

So this afternoon I esteem it a great compliment to be asked to speak a few words to this Associaton. The subject which I am asked to discuss is a very wide one and had better be prefaced by looking at world wide conditions generally. In that way we will come to look at our own national, our own internal conditions, in a better and more comprehensive way.

What do we find in the world today? That there is a general connof quietude in business matters. We find that in Great Britain dition of quietude in business matters. the industries of the country are getting into shape again. The only thing that interferes with that at the present time is the labor And in speaking of the labor conditions of Great Britain I came across something the other day in respect to the wages that were being paid to the miners, which may interest you. I did not know until I saw that statement what wages the miners were receiving, or rather what the owners of the mines proposed to give them at the present According to this despatch, in most of the coal areas the coal getters receive twenty shillings per day or 150 per cent more than in 1914 on a working week of five and a half days, while the surface laborers, the lowest grade of workers above ground, are refusing from nine to eleven and a half shillings daily. Much more can be earned by co-operation with the owners in checking absenteeism and improving The British Government is, as you know, safeguarding the manufacturing industries of the country by providing in a Bill for a certain form of protection:-

First, by levying for five years a duty of $33 \frac{1}{3} \frac{9}{9}$ upon certain articles of special national importance, like optical and electrical apparatus, chemicals, etc.

And second, by placing a surtax of $33\,\%$ duty upon any article listed for such surtax by the Board of Trade; in case such imported articles are taking the place of home articles and thus causing unemployment.

It may be of interest for you to know that although we speak of Britain as a "free trade" country yet they raised through the operation of the Customs last year an amount of money about five times as large as we raised in so-called "protected Canada" from the same source.

Before we pass from Great Britain, we should say this, that agriculturally speaking, Great Britain is becoming more self-contained, is growing more of her own foodstuffs.

France is rapidly rehabilitating her industries and getting back to where she is exporting the products of her factories. Agriculturally France is likely to produce more foodstuffs than she needs, and she will likely export a fair quantity.

Italy is following along the lines of France, but not so rapidly.

Belgium is rapidly regaining her former position as an important industrial country, and her people are working hard. Her factories are getting into splendid shape. Agriculturally, the people are intensively cultivating the farms. It is said, however, that Belgium will require a considerable portion of what foodstuffs she will need over and above what she raises herself.

Germany, according to reports of those who have been in the country, is fast getting back to her former position industrially, her people are working long hours. We know that Great Britain and the United States particularly, are feeling the menace of importations of the products of German factories. Germany is self-contained, in regard to foodstuffs, growing about all that she requires.

Switzerland is also regaining her position, in fact the imports from Switzerland would indicate that her factories can produce what she can't make. In other words, the importations from Switzerland are in many cases German products, and steps are being taken to see that it shall be made quite clear that these imports are of Swiss origin.

Scandinavian countries are getting back into shape again. Their labor conditions are not as good as in Belgium and as in France. The proximity to Bolshevistic countries has done much to impede their progress.

Russia is still a huge debating society, and conditions are altogether chaotic.

Australia is exporting the products of her farms, and she is also levying an increased customs duty on manufactured products that come in, in order to build up industries within the country. She is determined to be self-contained, not only in the matter of agricultural products but manufactured products.

South America, to my mind, represents the one great territory where there is a possibility of our increasing our export trade. South America is rather quiet today, like most of the countries of the world, but with populations that are growing rapidly, it will mean that she will require goods produced by the more highly cultivated countries of the world. South America is not an industrial country. A year ago last Fall at the International Labor Conference at Washington we had representatives of all the South American countries, and in conference with the employers represented in that great convention these representatives from the South American countries said to the representatives of "Now we would like to do business with Canada, we are doing Canada: business very largely with the United States, we would prefer in many respects doing business with Canada, but the difficulty is that there are no regular lines of steamships, enabling us to make regular connections and obtain our supplies.", That condition is true, but not to the same extent that it was. Our Government has provided a modified steamship service, somewhat intermittent, but it will become better. So that I believe we ought to look to South America to a larger extent for the exports of our factories, mines, etc.

In the United States of America we find too the prevailing conditions of quietude. The passing of their Emergency Tariff Bill affects 20% of Canada's exports to that country. This Emergency Tariff Bill accompanied by two important measures to protect industries,—first.

the Anti-dumping bill preventing importation at less than selling price or cost of production in country of origin, and in the second place, providing against customs duties being levied on values based on depreciated currencies.

I am glad to announce that our Finance Minister, Sir Henry Drayton, has included a clause of the latter kind in the Canadian budget, so that countries like Germany cannot send their manufactured products into Canada and have the duty based on their depreciated currency, but there is a provision whereby not less than one half of the value of the mark in ordinary times will be considered as the proper basis.

Having viewed world wide conditions, let us look at our own affairs, affected necessarily by these conditions in the different countries. When we look at the general dulness that there is in business all over the world is it any wonder that our export trade is quiet today and may be quieter still? Frankly, it does not look as though there would be anything in the way of rapid improvement. What does all this mean to us, therefore? It means to some extent a continuance of unemployment. It means also a loss of revenue, not only to the country but to the individuals concerned. It is an axiom that we can not live to ourselves as a country or be indifferent to the welfare of other countries. There is not a country in the world that suffers at any time without our feeling it in Canada. We are all inter-dependent, tied up the one with the other. The world is becoming a very small place, and we must realize when the world at large is in conditions such as face it at present, that we in Canada must take our share of these adverse conditions.

There is this to be said, however. Foodstuffs will be purchased by these countries when manufactured products will not be. The peoples of the world are not going to starve. And in one way or another, it looks as though financial arrangements would be made whereby there would be enough foodstuffs purchased to keep the peoples of the world living, whether they are able to finance them themselves or not. That possibly means not high prices for our agricultural products, but it does mean a reasonable demand. If the crops in all the countries are good, if our crop is good in Canada, it means that prices are likely to be rather low, but let us hope at all events that there will be a good crop, and if there is anything like a reasonable price, it means that money is going to be put into circulation in Canada, and that we will have a condition which is better than it would be were it not for the fact that we are such an agricultural country, producing large quantities of foodstuffs. In other words, it seems to me we must live more largely within ourselves. us frankly realize that the year in which we are living at present is an off-year, and the way in which we can overcome our troubles is to work harder, to be more frugal, to spend less on imported lines, to live within ourselves, to keep our heads, to be cheerful, and to wait until the sun shines again.

Is it any wonder that we should find ourselves in these untoward conditions today? Only a few years ago at the time of the Balkan wars we were told by great financiers we were hard up and suffering financial-The money or rather what constitutes ly because of the Balkan war. the value which money represents, had been destroyed in the Balkan If that caused such trouble and brought about quiet times, what must we expect today after the destruction wrought by the Great World Is it any wonder that we are facing conditions such as we are today? I suppose it is only on account of the fact that credits have been pulled so long, like you would stretch an elastic band, that we are able to get along as well as we do today. I think it was Sir George Paish who gave as a reason some time ago-that it was this great expansion of credits which had enabled us to get along with what money we had in the world and get along as well as we have done. It seems to me that Canada must treat her troubles just as a big business would any adverse

conditions. We must take the situation in hand and evolve a scheme which will get us out of our difficulties.

Now then there are two or three things which have a direct connection and bearing on our industrial life, and naturally affect our problems from day to day. First of all, there is a better standard of living claimed by the workers of the world. I don't know whether we will ever get back to pre-war conditions or not. I don't think we will. As I read the history of the past, it seems that every now and then we are lifted up on a higher plane than that in which we were living. We will get back to some extent, but I don't think that we should be in too great a hurry to get back to the same scale of living and wages which

characterized us prior to the war.

Then we have Social legislation, which is adding largely to our costs of doing business, and adding largely to the wages. There is a view prevalent, you know, that if the employers can be gotten to pay out money, they are the only ones who are affected. Every bit of legislation, like the Workmen's Compensation Act, the Mother's Pension Act (and mind, I am not finding fault with any of them) all add very materially to our costs. Take, for instance, the Workmen's Compensation In the year 1920 the total cost in Ontario advanced over three and Now that is coming out of the people, and it will a half million dollars. come out of the wage earners to a great extent, and it means a higher Now the employers have not objected to the higher cost cost of living. in connection with the administration of that Act, so far as taking care of the widows and orphans, but we did object to the rate being increased unless the workmen themselves became participants in the cost. We thought the rate was high enough before. It was as high as that of any other province or any state of the Union, with the exception of California, and Manitoba, neither of which are industrial provinces. But where we do object most strenuously is to the inclusion of the office staff, travelling staff, branches whether there is any manufacturing connected with them or not, and all these classes which are today included in the Workmen's Compensation Act. Now I ask you, gentlemen, is a travelling salesman a workman and should he receive compensation under the Workmen's Compensation Act? This has added to our total cost.

I would like also to speak of one or two other items in connection with the Labor World and industrial relations, and something might be said of the Open Shop.

Mr. Gompers stated this: "that the Open Shop meant the shop closed for all others but those belonging to the Unions. There you have frank statement. It is not a statement which we would agree with at all. An Open Shop is what its name indicates, an open shop free for all who are ready to work. A closed shop means but one thing—closed for all others but those belonging to the Unions. There you have the exact difference, whether Mr. Gompers says so or not, and that is borne out by the experience of many of you here connected with different industries.

Now Mr. Gompers used the term, in speaking of the United States Steel Corporation, "the autocracy of industry," but I ask what about the autocracy of labor? I can not speak authoritatively in respect to the United States Steel Corporation, in regard to autocratic methods, but remember that 50,000 of the employees of that corporation are shareholders in the Corporation, and further that company has spent \$70,000,000 in welfare work. With these two facts before you, there is not one of you will say very much about the autocracy of industry as applied to the United States Steel Corporation. What characterizes the United States Steel Corporation characterizes other great and small companies, not only in the United States, but in this country. We can see today in Great Britain what the autocracy of labor, the tyranny of labor might

be, if it were allowed to get out of hand. And while my own relationships with labor are of the most satisfactory character, yet when any class of society works in a group by themselves and disregards the interests of all other classes, then that class becomes a menace to society and to the country at large.

At the National Industrial Conference at Ottawa a year ago last Fall

there were three things that employers agreed to:

First of all, the right on the part of all who were engaged in labor to organize;

Secondly, the right not to organize on the part of those who did

not wish to do so;

And thirdly, collective bargaining within each individual plantif there were ten sections of that plant having ten different trades represented, the employers at Ottawa agreed that representatives of those ten special trades had a right to come to their employers and engage in collective bargaining but this is not the kind of collective bargaining demanded by the Unions. And our Ottawa decision is quite in accord with the Second Industrial Commission that was appointed by President You will remember that the first Great Industrial Commission Wilson. failed because when it came to a certain point, Mr. Gompers and his friends went out. The second Commission consisting of seventeen by Secretary of Labor, representative citizens headed They brought in a unanimous report. The first had 100 meetings. thing in the platform which they brought in was this: that when a dispute occurs in an industry, it ought to be settled in the individual unit Talk about the autocracy of labor. What of industry in which it occurs. about the Boston Policemen's strike? What about the Steel strike? What about the coal strike, where the people were menaced on every side, and if it had not been for the intervention of the U. S. Government I don't know what suffering would have occurred.

A great many labor leaders talk quite properly about the human element in labor. But what about the humanity of the employers in keeping their men on the payroll through these months of hard times without any change and full wages? The time is coming when we will demand and must have from every man an honest day's work for an honest day's pay, and until that time comes there is going to be trouble, it appears to me, in all industry; but I hope that day is rapidly approaching.

Then just a word about those Reds who would scrap our civilization over night and destroy that which is the best product of all the .It appears to me that in this country we ought to begin to do, what I see with great pleasure and satisfaction they are doing in Great Britain and the United States, it is time that those who talk sedition in our midst should get a severe lesson and should get a chance to take it easy in some of our institutions where they could think over their past lives and get three meals a day. If they are not ready to do that, I believe that you and I would be prepared to pay the expense of sending these fellows to Russia where they belong and where they say they have such magnificent institutions and laws and regulations to suit them. Why don't they go there? In connection with the uprising in Winnipeg, the summer before last, we will all agree that the Government in punishing men who were convicted of sedition did right; but it seems to me that the Government might go a step farther. These Bolshevists circulated their tracts in every house. Why should not the Government of the country, through its letter carriers, send literature into every house showing what Government in Canada means and how stable the Government of the country is, and how necessary it is for it to receive support from all sides, and at the same time show what should be done with those who have no regard for our laws and for our institutions. There are those who will never learn anything by the past.

There is no cause for pessimism today. True we have our troubles, but we are men. Let us face them and surmount them, and the time will come, and before long God willing, when the clouds will roll away and we will have had the experience which will really do us good. Canada is a land of great opportunity, a land that every one of us ought to be proud to live in. When you compare our condition with other countries today, when you realize our great natural resources, and realize also what manufacturing industries we have, and above all, when you come to the character of our people, what assets we have in this country! After all you know it is not so much in the ordinary every-day business of life, as it is in the character of the people that determine whether we are going to come out all right or lose. For

"Not in the clamour of the crowded street, Not in the shouts and plaudits of the throng, But in ourselves are victory and defeat."

After expressing appreciation on behalf of all those present and himself, of Mr. Parsons' excellent address, the Chairman asked Mr. George Wilson, Assistant General Manager of the Union Bank of Canada, to address the meeting.

MR. WILSON: Mr. Chairman and gentlemen, I can assure you that I appreciate the opportunity you have given me to speak to you this afternoon. The subject allotted is a big order and is closely corelated with the subject which has been so capably treated by Mr. Parsons so that he has stolen a part of my thunder. However, en passant let me say that I greatly appreciate Mr. Parsons' kind and gracious reference to the part which the banks have played in the trying years through which we have passed. The life of the banker, I can assure you, during these years has not been a bed of roses and his position can be likened to that of the family doctor, for we bankers have had to administer financial pills which have not been particularly palatable. The patients, however, have apparently faith in their doctors and it is to be hoped that the ultimate results of the unsavory doses will be beneficial.

I will not weary you with statistics but the financial resources of the country have shown steady development during the past few years. The total deposits of this country in 1913 were \$1,126,000,000, at the present time they are \$2,484,000,000. Current loans in Canada in 1913 totalled \$895,000,000, compared with \$1,433,000,000 today.

When war broke out so suddenly in 1914 the conditions facing the financial interests of this country were appalling and unprecedented, all economic traditions were cast to the winds. Mr. Parsons instanced the fact that after the Balkan wars money was scarce and that we naturally have aggravated conditions at the present time. The Balkan disturbance was a small thing compared to the late war and it is really a miracle of finance the way the Entente handled and mastered the difficult financial problems which cropped up daily. When we faced that fateful 4th August 1914, the outlook was serious; but we came through the ordeal splendidly. We fortunately had at that time a far sighted, courageous and able Finance Minister in Sir Thos. White and to him is due a very great meed of credit for the successful way in which this country shouldered its financial burdens throughout the war. The wonderful achievement of the Victory Loans is still fresh in our memories. Then when the Armistice came we thought our troubles were over, that business generally would improve forthwith, and that the country would soon be restored to normal condition, but quite the reverse happened. We thought we would all get to work again; that prices would fall and equilibrium soon be restored, instead of that everything went from bad

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to worse, economically and commercially, prices rose to such an artificial extent last year that living conditions were almost impossible. The banks were put under pressure because of these conditions and in July of last year the internal trade conditions of the United States became very tense and a decided decline in the prices of all commodities took place; many strong industrial and mercantile concerns were badly In Canada the slump came, but more gradually. Commercial crippled. and manufacturing credits were heavily inflated; an inflation that had taken place all along the line during the artificial trade activities incidental to the war, and it was up to the banks to apply the brakes. The Americans have very aptly described that condition of things as "frozen credits" that were in the process of being thawed out. It was then that the real troubles of the bankers commenced. They were loaded up with congested loans just as merchants, manufacturers and wholesalers were with heavy stocks of goods, the value of which declined so rapidly that the margin of security became narrower and often disappeared entirely. The banks in many cases were compelled to force their customers to dispose of their stocks, which they were naturally loath to do at a sacrifice.

You have no doubt all read Sir Henry Drayton's Budget Speech, which I think is encouraging. We should all be gratified with the country's Profit & Loss Statement for the past year as it is a very much better showing than the great majority of us expected, but the Income Tax will be with us, gentlemen, for a long time to come, but I believe that, with the gradual fall in prices and the consequent lower cost of living, the burdens of taxation will be easier to bear as time goes on. After all, it is the man with the fixed income that pays the bulk of the taxes and with the drop in the cost of living, he will be able to save more and pay his taxes more easily. The trade of the country has not been as satisfactory as it was a year ago. Sir Henry Drayton touched upon that point and admonished the country to buy less abroad, to conserve our resources and to profit by the lessons of conservation and economy learned during the war. He instanced the fact that imports from the United States last year were \$856,000,000, the exports being \$560,000,000, or an adverse trade balance of approximately \$300,000,-We have to buy many classes of goods from the U.S. which we cannot produce, particularly coal, cotton, steel, etc. The monthly trade balances with the U.S. still go against us to the tune of about \$23,000,-000 to \$25,000,000 a month, so that there is nothing in the trade conditions which will restore the exchanges to normality. How then is the discount on Canadian Exchange in the U.S. to be eliminated? a question which vitally affects the majority of you gentlemen. idea is that it depends on the rehabilitation of Sterling Exchange. In other words, when \$4.86 in American Currency can be purchased in London for £1 Sterling, this country will be able to settle its debt to the U.S. by remittances through London as was done in ante bellum days.

Apropos of Sterling, it would please you all to have read in the papers the other day that the Pound Sterling has passed the \$4.00 mark again in New York which is the best rate that has been quoted for a year. Then again, we see that the Bank of England rate was reduced a short time ago from 7% to $6\frac{1}{2}\%$, and mark this, gentlemen, very shortly AFTERWARDS the Federal Reserve Bank of the U.S. reduced its discount rate; an incident which I think affords a strong indication that the financial centre of the world is still somewhere in the vicinity of

Threadneedle Street.

Mr. Parsons has very properly pointed out that this country is dependent upon world conditions; that we are not sufficient unto ourselves and that our affairs are closely co-related with the prosperity and general conditions of outside countries with which we trade. As an index of the trend of world conditions at the present time, one can look to Great Britain as a leader and feel fairly confident of the outlook. Austen

Chamberlain, the Chancellor of the Exchequer, in his recent Budget Address, characterized the past year as one of the most remarkable in the financial history of Great Britain. He pointed out that during the year the debt to the U.S. had been reduced by £75,000,000 and the debt to Canada reduced £20,000,000. During the last fiscal year Great Britain reduced her debt from £7,820,000,000 to £7,573,000,000 or a reduction of £247,000,000 for the year.

Mr. Parsons expressed the opinion that we would not again reach pre-war levels in prices. I have given some thought to that particular question and personally I believe that we will ultimately see pre-war levels of prices restored. It is true that the conditions of the laboring classes will never be brought back to the pre-war status in so far as general living conditons are concerned and it is possible that the wages of labor will not reach pre-war levels, but I do believe that the lessons of increased efficiency, elimination of wastage and lost motion and improved manufacturing methods, which we learned during the war period, will ultimately increase the Nation's efficiency of production to such an extent that goods will be produced as cheaply as they ever were and that labour will in consequence receive higher wages as a recompense for We have only to recall the splendid part which Canada took in the manufacture of munitions to realize that the genius of manufacturing is inherent in our people. There are hundreds of factories all over the country which performed intricate munition operations in the most capable and efficient manner and so marked was the genius of the Canadian in devising new machinery and labour saving devices that you all know how the American manufacturers came over to this country to copy our methods of manufacturing munitions.

Notwithstanding strikes and other trials and tribulations with labour, I believe that the saner elements in their counsels will prevail We already see a disposition to accept lower wages and increased efficiency of labour is in evidence all along the line. ment unfortunately is still much in evidence all over the North American continent, but the trend is in the right direction and the leavening process is going on which will gradually improve conditions. we have really struck rock bottom. It has been a trying time for manufacturers, merchants, financiers and individuals generally but the situation must be faced courageously, just as good Canadians have faced other adverse conditions with faith and courage. We cannot start upon an upward grade until we get down to fundamentals and to get there losses must be taken courageously and taken promptly. New goods produced at lower price levels are bound to force the old higher priced goods off the shelves. The country and its people are sound and Canada has passed through a trying ordeal perhaps better than any other coun-The country itself was entirely immune from the devastation of war and we have not suffered anything like the privations of European countries. We have a magnificent country with unlimited natural resources in field, forest, mine and fisheries. There are approximately 270,000,000 acres of arable lands in the three Western Provinces, of which only 32,000,000 acres, or 12%, are under cultivation at the present We must do more than produce wheat and agricultural products. We should develop into a great manufacturing country and if we have not already attained that status, there is great promise of it. We can never be relieved of our terrible burden of National indebtedness unless we develop our export trade. The Government in their wisdom have formed the Mercantile Marine consisting of a fleet of 60 ships costing approximately \$70,000,000, and in the creation of the Mercantile Marine there were visions of foreign trade. When these ships are placed upon sea-going routes in a regular and orderly manner, I have no doubt that this country's surplus agricultural and manufactured products will be transported on all the seven seas by our own Mercantile Marine.

South America has been lauded as a great field for the exploitation of Canadian trade and great as the possibilities are there I think they are equally as great in China. I visited China twice during the past two years and was greatly impressed by the trade possibilities of that wonderful country. They have a population of 400,000,000 and their methods at present are primitive in the extreme. The transportation problem in China is the chief drawback to their development, there being only approximately 5,000 miles of railroad in that vast country. Chinese are indefatigable workers and practically everything is done there by coolie labour. The Northern plains of China, which I traversed from Hankow to Pekin, are as fertile as any land on the face of the globe. The Chinese are fast emerging from their lethargy and becoming imbued with Western ideas and are anxious to develop their country, so that it seems to me that the country affords an excellent field for Canadian manufacturers. There are many products which we could supply them and, strange as it may seem, the Chinese usually pay cash for everything they purchase. But in order to obtain a foothold upon Chinese trade it would be necessary to send our trade emissaries out there to show the people the kind of goods we can make. It is futile to attempt to do business with that country on long range methods.

I was much interested in the aims and objects of the Purchasing Agents' Association as outlined in this pamphlet, which in part reads: "The power of an Association with a potential buying force of \$2,000, 000,000 or n_{tlemer's} being recognized by organized and other selling forces and is doing more than anything else, to make coal, steel and all other contracts of like tenor, more than mere "scraps of paper;" it is promoting co-operative purchasing, it is correcting "bribery, sharp practices and other abuses of which members are fully aware." The existence of the Association is justified if its only object is to ameliorate the evil of cancellation of contracts, which has become so general a practice on this continent and to some extent in Europe. It makes a very unpleasant situation for the bankers and the sooner we are restored to the old sound basis of irrevocable contracts, the better for bankers and It is difficult to forecast financial conditions and he would be a very daring person who would venture a positive opinion on that score, however we have passed the most difficult period and we need have no misgivings of our financial future. We must all recognize that the restoration of normal conditions depends upon each one of us putting our shoulders to the wheel. "Practice economy and produce" is the old cry and that is what we must do more than ever. Each individual must realize his personal sense of obligation to the community and take his part in building up the shattered structure. Pessimism is said to be a very good commercial asset because to a certain degree it is synonymous with conservatism, but in these days of depression we require leaders It is, I think, fortunate that we have at the financial with optimism. helm today, a man of Sir Henry Drayton's temperament; but he is hardheaded and solid and possesses to a very marked degree that optimistic temperament which is such a desirable quality in these times, and it is encouraging to hear him speak so optimistically of the future of this country.

I observe that there are a lot of young men here today wearing the military button. Those have all gone through difficult times and I do not think that those who stayed at home trying to "keep the home fires burning" will ever forget that occasion in March 1918 when the valiant British army was driven back by the Huns and in the orders of the day Field-Marshal Haig said: "We have our backs to the wall." Just about the same time that little Welsh wizard, Lloyd George, said in Parliament, "Go on or go under," that was the spirit in those days when everything looked infinitely darker than it does today and the courage and faith that animated you all in those dark and troublesome days is the spirit

which will ultimately surmount the barriers which confront us today and which will bring prosperity and happiness to this great country.

CHAIRMAN in expressing appreciation of the meeting of Mr. Wilson's address, said we were particularly glad to hear Mr. Wilson say that the barometer of finance was found on Threadneedle Street. That was demonstrated in 1914 if it was never known before.

CHAIRMAN then called on Mr. T. N. Phelan, to address the meeting on "Contracts."

MR. PHELAN: A contract is an agreement between two persons, which is intended to be enforceable at law, and in the course of our experience with the Courts that probably 75 per cent of the cases which came before the Courts could have been avoided had a little care been exercised or a little attention been paid to the elementary principles in the making of a contract. Now in probably 75 per cent of the cases we find that the Courts are asked to find out what the parties meant, instead of the parties expressing it themselves. I speak more particularly about the contracts in which you as purchasing agents are interested. There are usually four points on one of which the contracting parties have failed to express themselves definitely, namely:

Quality.

Quantity.

Terms of Delivery, and

Price.

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75 per cent of the disputes have for their object to determine just what the parties meant with respect to one of those four terms. 25 per cent of the remaining disputes come to Court because the parties have not paid the proper attention to the matter of form. I shall proceed first to discuss with you the question of form, because it is the lesser requirement. Form is required in certain cases. In many cases writing is required, and the chief object of the Legislature in demanding writing was to avoid the frequent commission of perjury prompted by parties relying on their unaided memory.

Formal contracts are:

Those which must be made under seal. You will see the little red seal on a deed. That seal is absolutely necessary for the validity of the document. And the documents which must be made under seal are:

(a) Deeds, leases over 3 years;(b) Certain company contracts;

(c) Transfer of shares in British ships.

You are not interested in this latter. Your interest lies in company contracts which must be made under the seal of the company. These are certain formal contracts which do not pertain to the every day business of limited companies. But deeds and leases over three years must be in writing and under seal in order to be valid.

Now there is a second class of contract which need not be under seal but which must be expressed in writing. These are:

1. A contract to answer for the debt of another.

2. Contracts with reference to land.

3. Agreements not to be performed in one year.

4. Real Estate Agents' commission.

Now contracts that come within these four classes are positively not enforceable in a Court of Law, unless the contract is in writing and signed by the person to be charged. (Speaker here invited questions as he went along).

A contract to answer for the debt of another must be in writing, and let me give you an illustration of what the law means by that. Supposing I go into a store with your Chairman here, and I say to the tailor: Give the Chairman a suit of clothes and I will be responsible for the price.

That would not be a contract to be responsible for the debt of another because I personally become the debtor. But if I went to the store and I said: I will see that the price is paid, that would have to be in writing.

The second, or contracts with reference to the sale of lands, must

be in writing, otherwise the contract is not enforceable.

Third, those which are not to be performed within the space of one year. If I should hire one of you gentlemen for the period of one year from the first day of June next that is a contract which would have to be in writing because the contract would not be completed within one year. Similarly if you should lease a house for a period of twelve months and the lease should commence on the 24th day of May next, that is a contract which must be in writing or the Courts will not enforce it.

And finally by legislation it is provided that no real estate agent can recover commission for the sale of property unless his contract is

in writing.

The third class of formal contracts are ones in which you are more particularly interested. In this class you may have one of three things—Writing, Part Payment, or Part Performance. And that requirement extends to all purchases and sales of goods, of the value of over \$40. Any article of the value of less than \$40 can be bought or sold by verbal contract. Any article the value over \$40 must be evidenced by writing, by part payment or by part performance. If there is not one of these three elements present then the contract will not be enforceable as a matter of law.

Now, Gentlemen, that is a brief review of those contracts in which the law requires a certain form as a condition of their validity.

Question from a Member: Does acknowledgment of an order con-

stitute a contract?

Answer: A mere acknowledgment of the receipt of your order does not by any means constitute a contract. If you put in an order and you want to hold the vendor, the vendor must accept your order in writing, or the vendor must deliver a part of your order, or you must deliver a part payment. A mere acknowledgment does not constitute acceptance. I would recommend, wherever you are dealing with articles over the value of \$40, that both your offer and your acceptance should be in writing, and it should never be left to a verbal understanding, because a contract may be enforceable against you and not against the other man.

Question: In the event that he comes back and acknowledges the order and says it has been entered according to the order, has he accepted

the contract?

MR. PHELAN: Yes, he has accepted in that case, and it would be

sufficient to make it enforceable at law.

Mr. Phelan continued: Now having dealt with those contracts in which the law requires certain forms, let me now deal with the formation of all contracts generally, because there are certain principles which are common to all contracts:

Now to all contracts there are three essentials:

1. There must be an offer, plus an acceptance, plus consideration.

These three elements must be present in every instance in order to make an enforceable contract at law. Now an offer is a proposal to enter into an agreement. An acceptance is the assent of the person to whom the offer is made, and the consideration may be money, or it may be something else. It may be some benefit to one party to the contract or some obligation assumed by the party on the other side. Now it is important to analyze these two elements—offer and acceptance—with just a little care because we find that most of the difficulties arise through a failure to appreciate what an offer is and what an acceptance is. In the first place: Is every proposal that is made an offer which you are at liberty to accept and turn it into a binding contract? My answer is that every proposal is not an offer. For instance, in casual conversation you might say to a friend I would like to sell my motor car if I could get \$500. Is

he at liberty to say: "I will take your offer," and a contract is then formed? No, he is not, because you merely made a declaration of intention.

In the second place, we have advertisements of sale by auction which we see in the newspapers every day. Are these offers which we can turn into a contract by acceptance? The law does not regard an advertisement of that kind as an offer. The law regards that as an invitation to you to make offers. If I offer my motor car for sale in the newspapers, you are at liberty to say: "I will pay so much for your car," and when your offer comes in I am at liberty to accept that offer or reject it as I see fit.

Similar to an advertisement for sale by auction, we have an advertisement for tenders. If you make the lowest bid, must your bid be accepted? The layman might say: That is an offer and an acceptance. The answer is: An advertisement is not an offer for acceptance, you are simply invited to make an offer, and the person advertising for tenders is at liberty to accept any offer he pleases. It is quite superfluous to state in such an advertisement "Lowest tender not necessarily accepted."

Now then, having explained what an offer is, it is necessary that that offer should be communicated to some person. For instance, services may be performed without request. I might go home some evening and find that I was so fortunate as to find that some person had come along and painted my house during my absence. Would I have to pay for that? No; his work would be an offer to me and not having been in a position to communicate with him my acceptance or refusal before work was done there was no contract.

We also find that in cases where there was a reward offered for the discovery of a lost article, and the person who finds the article did not know of the offer of the reward, that person can not claim the payment of the reward. The payment of reward was an offer by the person who lost the article, but because the reward was not communicated to the person who found the article, there is no contract.

We find the same principle illustrated in conditions printed on the back of a railway ticket, where the company limits its liability in case of accident, and where there was nothing on the front of the ticket to draw the purchaser's attention to this provision. Because conditions had not been communicated to the holder of the ticket the Courts have held they were not binding on the purchaser. Now I have used these illustrations to show the necessity of every offer being communicated.

Now the next thing we have to consider is the Duration of the Offer: Suppose I put an offer in writing and send it to you—how long is that offer open to acceptance? In the absence of anything in my communication stating the length of time it is open, the Court assumes it is open for a reasonable length of time. If I state how long it is open, then it is open for the length of time I state, but I am at liberty to withdraw this offer at any time before its acceptance providing the revocation of the offer reaches you before you have sent your acceptance of it. And the only way in which you can protect yourself is to offer me some consideration for keeping that offer open for a period of, say, 10 days. If you will write back and say to me: I will give you \$5 a ton higher, or \$10, to keep that offer open for ten days, and I accept, that then is a separate contract, and binding me, and under those circumstances I am obliged to keep that offer open.

Question: What about the case of an option if there is no consideration outside of the writing?

Answer—MR. PHALEN: There must be consideration for an option, and it should never be a nominal consideration like \$1—it ought to be \$5 or \$10.

Question: Suppose we received an offer today from New York that is good until twelve tomorrow; is that offer good until 12 o'clock Toronto or New York?

Answer—MR. PHELAN: That illustrates what I referred to early in my lecture. The parties have not been definite in stating their terms. I think the interpretation would be that the time would be where the offer was to be accepted—namely, 12 o'clock New York.

Question: What determines the time as to withdrawing the offer before its acceptance, at what point is the offer withdrawn—at the point

of mailing or receipt?

Answer: MR. PHELAN: The receipt of a letter in the ordinary course of post. That has some exceptions. If I make an offer to you by letter, and I say: I will give you ten days to accept that offer, I can revoke that offer any time before you accept. But if your letter of acceptance is posted before my letter of revocation reaches you then there is a binding contract.

Question: How about the legality of cancellation by telegram of an

offer made by posted letter?

Answer—MR. PHELAN: It is perfectly good revocation if the telegram reaches you before you have posted your acceptance. The very instant there is an acceptance of that offer you have concluded a contract and neither party to the contract can revoke it without the consent of the other.

Mr. Phelan continued: Just to illustrate this point: An auction sale is conducted by the different bidders around the room making offers, and the acceptance of the offer is when the auctioneer's hammer falls. Now if I make a bid I am entitled to revoke that bid any time before the hammer falls. It may be the highest bid, and the auctioneer's intention may be to accept it, but if I revoke it before the hammer falls there is

no contract even if there are no other offers.

The next thing to consider is THE ACCEPTANCE that is the communication of your assent to the offer. That may be made in a good many ways. If I go into a railway station and purchase a ticket, my acceptance of the ticket is the acceptance of the railway cympany's contract to carry me. There is a case where a Patent Medicine Company offered a reward where their remedy failed to cure. The mere fact that the party was not cured was an acceptance of that offer. And as I indicated to you before, the knock of the auctioneer's hammer was the acceptance of the bid. But the acceptance must always be by the person to whom the offer was made. There is a very well known legal case, which very well illustrates that principle. A was the owner of a horse. B wrote a letter to A and said: I will give you \$150 for that horse, and if I do not hear from you by return mail I will consider the horse mine. Of course you cannot make a contract in that way, otherwise your purchasing agents would have an easy time. However, A who was having an auction sale, went to his auctioneer and said: Do not put that horse up for sale because I have sold that horse to B. But by mistake on the part of the auctioneer the horse was put up and sold. B. brought an action against A, and the Court held he could not recover because there had never been any communication of acceptance to A of his offer, and the mere statement of B to his auctioneer that the horse was sold was not an acceptance to A.

There are occasions, however, where silence is deemed an acceptance of contract. If I went home and found someone had put a couple of cases of wine into my cellar, and I used them, the mere using of them would be an acceptance. But apart from acceptances of that kind, ac-

ceptance must always be communicated.

Now then I come to what is probably the most essential part of the contract: the Acceptance must always be made in the very manner prescribed by the offer. If a man writes you and indicates the manner in which his offer is to be accepted you must follow to the letter the manner in which it is to be accepted, and if you deviate from it, no contract is created. In addition to that, the acceptance must be absolutely unqualified. And it must be absolutely identical with the terms of the

a man writes and says: I will sell you 1.000 To illustrate: bushels of wheat at a certain price, delivery on such and such a day, and you write back and say: I accept that offer, "Terms of payment to be Is there a contract? There is not, because the man's letter to you offers to sell the wheat on certain terms, and when you write back and suggest other terms, it is not considered an acceptance. the contrary, what you intended should be an acceptance may be treated by the other man as an offer, and he is at liberty to accept your offer and turn that into a contract. But in all cases you must be extremely careful, because I think that is one of the difficulties which we most frequently meet with in the Courts, and as I illustrated the last time I was discussing it with you, your offer and acceptance must coincide one with the other as these two coins coincide (illustrating). If there is the slightest variation, there is no contract.

Question: If you ask for tenders for additions to your house and a man submits specifications and you call him by telephone and say, I will accept, does that constitute a contract?

Answer—MR. PHELAN: Yes, that is not a contract in connection with land, goods, wares or merchandise, but one for performance of work and for material. If you accept his offer by telephone there is a binding contract.

Question: You mentioned the fact that the telephone acceptance of that contract for material and labor is legal but that it does not apply in any sense to merchandise?

Answer-MR. PHELAN: Not of \$40 or over.

Same Questioner: Would that same condition hold by an industrial house making alterations to their plant—a telephone call would constitute a contract?

Answer-MR. PHELAN: Yes it would.

Mr. Phelan continued: Some difficult questions arise in connection with the making of contracts by post. If I write a letter to you making an offer you may give your acceptance through the post office, as the law says, having made my offer by post I have made the post office my agent for acceptance. But if you should happen to hand the letter to your postman and the postman should lose that acceptance between your office and the post office, there is no binding contract, because while I made the offer, by post and have therefore made the post office the agent to accept your acceptance, I did not appoint the postman my agent. And if I, in making the offer, give you the wrong address and do not give my name accurately, but you adopt what I give in the letter, then there is a binding contract once the letter of acceptance is posted. The mistake is mine, not yours, and is a binding contract the instant the letter of acceptance is put into the post office.

There is one difficulty that I would like to point out to you in connection with contracts by correspondence. Fifty or sixty letters may be exchanged over one contract; different details will be settled on from time to time, then other details will come up and changes will be made, and finally you may think you have a contract somewhere in the fifty or sixty odd letters that have been exchanged between you. You may find finally that you have no contract. So that in an extended matter such as this when you reach the point where you think a contract is made, I would suggest that you forget all the prior letters and sit down and write a letter and say: "My understanding of the terms of the agree-

ment between us is as follows-etc."

Now then the last point I want to touch on is the point of consideration, which is the third element which must be present in every contract. That does not necessarily mean money. It may be in services—a contract to enter employment, an agreement to give your services as good consideration for the contract. But there must always be consideration for the contract. If I said: "I will agree to give you my

automobile," and you say: "I accept it," there is no contract, because there was no consideration for that gift.

Would he not have to give a receipt for the \$5? Question:

MR. PHELAN: Not necessarily. No person is under obligation to give a receipt for money paid.

Question was here asked whether an offer of 1,000 tons of steel at market price, constituted a definite offer?

Yes, said Mr. Phelan. You do not specify the price yourself but as long as you specify the means by which your price can be determined, that is sufficiently definite.

If a man makes an offer through the medium of the Question: post office, and a few days later he calls you on the long distance phone, saying: If you are ready to give me an order I will take 5% off. Then you write him an acceptance through the post office? Is that valid?

Yes, that is valid. MR. PHELAN:

In reference to the question of whether leaving copy of order constituted contract, Mr. Phelan said it did, unless it has on the bottom, "subject to the acceptance of head office." Mr. Phelan stated: I have known cases where before acceptance of head office could be obtained the purchaser has changed his mind and revoked his order. If he wants to cancel it he can cancel it any time before acceptance of head office.

Question: If you place an order for certain materials and specifications to be given to one of your representatives, are you responsible for anything he arranges?

Answer by Mr. Phelan: Provided he was an agent with authority,

anything he says within the scope of his authority you are liable for.

One more point and I am through and that is on the question: what is your remedy where you purchase goods from a man, a binding contract is entered into and he fails to make delivery of these goods? remedy is to go immediately into the open market and buy these goods at the best price you can, and the vendor is under legal obligation to

pay you the difference.

Upon question from a member whether a firm could be held where a salesman offers goods below the list price, Mr. Phelan said: If the salesman quotes below his list and the purchaser accepts, unless the purchaser knew the agent had no authority to quote under the list price there is a binding contract. That is a question of agency, however, rather than one of contract. The correct method with all these things is to confirm to head office, saying: We bought from your Mr. So and So such and such goods at such and such prices. Again I say there is no excuse for a business man buying his goods in which delivery is an important item and not specifying time of delivery, and then leaving it to the courts to determine the time.

Another member asked: Supposing a salesman quotes the price that has been given by his firm. The price in the meantime, within a space of 24 hours, has gone up. He has no advice from his firm but he knows from reports in the papers that the commodity entering into that will likely advance. He takes an order on the basis of the price he has from his firm. Is his firm bound to accept?

MR. PHELAN: Certainly; just the same as if you had made a mis-If the salesman made a mistake his firm must suffer. And of course his firm can protect themselves by putting on the bottom of the order "subject to confirmation by head office."

Upon question as to whether a verbal statement to that effect would hold, Mr. Phelan said: Yes, but I think really that ought not to be left open to dispute but should be specified on bottom of the order form.

Mr. Phelan continued: If you want to make certain to get your article on the date specified, put in your contract a little clause "Time is of the essence of this contract." If you do that, it will act as a protection for you.

All matters of contract are matters of Provincial law.

Upon question "You make contract for your requirements during the year. In the meantime you find you are able to buy something else that will answer your purpose—is that contract binding for the whole year?" Mr. Phelan answered: Certainly it is.

The same questioner said: But suppose he claims he has all that he requires of your stuff?

Mr. Phelan answered: Then of course that brings in a question that I can not decide—the veracity of the man who is speaking.

Question: Supposing a purchase order is placed for a certain amount of material at a certain price. You have nothing from the vendor but his acknowledgement of purchase order. In the meantime these goods go down. You find you don't require all those goods. Can he make you take the full amount of the goods?

In regard to this question Mr. Phelan elaborated on the difference between acknowledgement and acceptance, saying: as long as you are sure of your position, it is all right. If you merely acknowledged the order, you do not need to take the goods; but if you accepted it, he can hold you to it.

Instancing here, Mr. Phelan said the usual stereotyped phrase of "We acknowledge your order of such and such a date, which will have our immediate attention," was only an acknowledgement, unless part of the goods were delivered. If, however, Mr. Phelan said the vendor said: We acknowledge your order, and will ship on such and such a date, the Court would say that is an acceptance.

Mr. Parsons, who had remained with the meeting, thought the phrase "which will have our prompt attention" would be interpreted as an acceptance. To which Mr. Phelan replied that saying "I will give your order my attention" might mean I will investigate.

Another questioner here asked if common usage would not have a lot to do with it, to which Mr. Phelan responded "Not an awful lot, other than that the Courts are sometimes guided by precedents. Each contract stands on its own footing."

The Convention demonstrated their pleasure and appreciation in a very hearty manner, to which Mr. Phelan responded: "Thank you, Gentlemen; I know I have lost a lot of money to my profession this afternoon."

Chairman then asked Mr. Howland, of Boston, to address the meeting on "The Profession of Purchasing."

MR. HOWLAND: Mr. Chairman and Gentlemen: Wherever I talk I make enemies. A large number of the purchasing profession are crabs. What do the majority of you do during the day? You sit in your office. You have the four walls and ceiling, and up to the time before the war and commencing now again, a string of men come in to you, call you Mr., do everything but kiss you and make you think you know a lot more than they do. When they go out of that door you will say: I put it over that son of a gun. Now that is a fact.

A year ago I spoke before the Executive Committee of Associated Industries of Massachusetts on "Graft in the Purchasing Agent's Office," and one gentleman asked me "who is responsible for it." I said: "you are." He asked me how to correct it. I said: first by getting a purchasing agent who is an executive, one whom you can trust. I don't care how good a sales force you have, they can't sell your goods unless they are bought right.

Secondly, give that man a sufficient salary so that he won't have to graft.

Third, give him authority so that he can rid your factory of graft. I believe that the Purchasing Agent should spend a good part of his time among the plants manufacturing his goods, and he should acquaint himself so far as possible with the method of manufacturing.

Where a lot of us make a mistake is in pretending to know everything about what we are buying. I have never pursued that attitude. My idea has always been to find the best man in his line, a man who will give you good value for your money, and stick to him. Of course I check up once in a while with him, but so long as he treats me right I will treat him right. Our concern never had to shut down one day because of lack of material.

In closing I would simply like to call attention to the New England Association. It is the oldest of its kind, the second largest in the country. Its total membership is greater than the combined membership of all the Associations in Canada, and our average attendance last year was 216. A man came to my office and said to me: Do you know anything about the Purchasing Agents' Association? I said yes. He said: I want to join. I saw in the paper where you people had a meeting last night. My principal saw it too.

I don't believe that New England is any better or that the men are more active than you are right here. I thank you for listening to me.

Chairman then asked Mr. Berg of Hamilton, for his address on "The Exchange of Information."

MR. BERG: Mr. Chairman and Gentlemen: When President Ogilvey sent word he expected me to prepare a short paper on the exchange of information what I should say was a blank and dark mystery, so, after many sleepless nights and hours of toil, the laboring mountain, for that is a literal translation of my name Berg, brought forth the following mouse.

Our minds to be properly adjusted to the receiving and giving of information should be considered in a dual capacity and can be likened to two containers, one partially filled and the other empty, awaiting what information is to be poured into it from some outside source. In exchange the full container of our brain is ready to dispense some of its contents into the waiting one of a fellow worker with the end in view of a general mixing and distribution of knowledge to the mutual benefit of all. Just as soon as we seal either vessel we are isolated from our fellows and although we may shine forth as brightly as a 100 watt nitrogen lamp in our own little corner of the world we will be of little value in conveying light into this modern world that accepts service as the golden rule of business.

In the early part of the 15th century the centre of culture, learning and art was located at Constantinople but its brilliance did not radiate to any great distance, for practically the rest of Europe was steeped in the ignorance of the Dark Ages. Those fortunate beings who had the advantage of education formed themselves into a close corporation and kept their knowledge within the boundaries of a very limited area. The thought of exchanging what information they possessed with the outside world never entered their heads; it simply wasn't done.

However at this time, 1453 A.D., the Turks captured Constantinople and, like a mighty can opener, tore off the lid that sealed this early monopoly, scattering the men of learning and education to the four corners of Europe. Now all that these monopolies of erudition possessed when they found themselves on foreign shores was a head full of infor-

mation, which was of mighty little value to feed and clothe them. Accordingly they immediately set about exchanging this information for the necessities of life and it was not long before we saw throughout Europe a general spread of culture, or re-birth of learning which is the reason that this period of history has come to be called the Renaissance, of art and letters.

Prior to the formation of the Association of Purchasing Agents the individual buyer could be likened to these early monopolists of education of Constantinople; he was completely out of touch with the men following his profession in similar or different lines of industry. Alone in glory he sat at his desk, gleaning his information from trade journals, newspapers, commercial travelers and similar sources, but not even knowing the name of the purchasing agent in the plant just around the corner. I do not mean to say he was not well posted nor efficient, but he was an individualist.

Today we see an entirely different condition for the birth of the National Association of Purchasing Agents has opened the way for every purchasing agent to make friends among men of his own calling and to seek and gain information on the purchase of commodities of modern industry through sources entirely unknown before.

Let us look at what are our reliable sources of information today. First we have our trade journals without which we would feel as if our right hand was missing, but they lack the personal touch which means so much to the modern man of business. Next we have the salesman, a very good guide to market conditions when prices are firm or rising as we have had evidence in the past several years, but can he be depended upon to tell us to go lightly in a falling market, or in anticipation of such?

To whom then must we look for this more intimate information, or such information hard to get from books or papers? Simply to ourselves, meeting together in friendly informal gatherings, exchanging ideas, discussing local and general conditions, not afraid to express our thoughts for we know we are among friends, our remarks will be treated confidentially and what we say, or what we hear, is as if heard or said in our own office or home for are we not a big family of brother workers, breaking bread together and talking over our affairs in a brotherly manner?

Undoubtedly our most important source of information,—I am now speaking as members of the Association, is the reports of our commodity committees. Each of us is not interested in every report but the report and its resultant discussion is a source of information too valuable to be omitted from any meeting.

Next we have the speaker of the evening at our dinners. The subject of these talks need not necessarily be upon buying, markets, price tendencies, etc., but any address on live matters of the day are of interest, and valuable for the information they impart. Even though it may be on the manufacture of some article we never buy, yet we are almost certain to hear something that will be of use to us in our profession.

Another means for the exchange of information has occurred to me which may not be original though I have never heard of its being tried. Why can we not arrange for a series of inter-plant visits? Possibly I am looking upon this too much from the viewpoint of a factory manager for I combine that duty with that of purchasing agent, but I do like to see the wheels go round in the other fellow's factory no matter what he may be making. If it is something I buy, so much the better, I then know how to write my specifications more intelligently the next time. Suppose he is making something entirely foreign to what my concern may make or sell, what's the difference? I am seek-

ing Trades Unions of this country. I have this conviction that if those manufacture of huge locomotives or the spinning of delicate silk threads there must be some point of common interest even though it is only the soap with which we wash our windows. Let us not shut our eyes to what the other fellow is doing but take a friendly interest in each other's activities in order that information of use to the purchasing agent may become as free a medium of exchange as the money of our realm.

CHAIRMAN thereupon gave the floor to W. H. Moss, Valley City Seating Company, Dundas.

MR. MOSS: Would you permit me as a guest to express my own appreciation of the good time we have had together this afternoon. I want particularly to say how pleased I was with the address of Mr. Parsons.

Speaking about the industrial outlook: I have a very sincere feeling that there is a class of people in Canada who have the solution of the unemployment problem in their own hands. I refer to the Building Trades unions of this country. I have this conviction that if those people were reasonable, and if the manufacturers of building materials were reasonable, that there could be created in Ontario a building boom that would carry every other industry along with it. Everywhere throughout this land there are people who are hungry for homes and who have the money to buy their homes at reasonable prices. In Western Ontario a great educational institution is not to be built because of prices; in Hamilton the Technical School cannot be built. But if the Trades Unions could be persuaded to lower their prices a building program could be started that would carry with it every other trade. The first thing when a man gets into a new house, he wants new furniture. New furniture means the purchase of machinery.

It was then moved by Mr. Burch, seconded by Mr. Hewitt of Bennett & Wright Co.,

That a vote of thanks be extended to the gentleman who had addressed the meeting in the afternoon.

Unanimously carried.

Chairman extended the thanks of the meeting to Mr. Parsons, who was the only visitor remaining.

The meeting adjourned.

Banquet at 6.30 O'clock

Major Bell acted as toastmaster.

First toast to His Majesty, The King.

Next toast to the President of the United States.

Mme. Ruth Thom-Dusseau, Soprano Soloist.

Toastmaster then introduced Mr. W. L. Chandler, President of the National Association.

Mr. Chandler was greeted by a storm of applause. It is a pleasure to be in Toronto again.

Your toastmaster asked if I would say one or two words in answer to that query which he put. It is not easy to put an iron clad definition upon the benefits which any single man obtains from this Association. In our organization, for instance, a man who does not buy coal does not care very much whether we adopt a standardized coal contract or not. But the fact that twenty-eight men attended the committee meeting which sat on that coal question evidenced the fact that there are a large number who do care. Another evidence was that Mr. Boffey had over 500 letters offering suggestions on this tentative contract. That is a very concrete evidence that over 500 of our members were so vitally interested that they wanted to help build that contract.

The Hamilton, Toronto and Montreal members of the Iron & Steel Committee have now in their possession copies of a tentative pig iron contract which will be followed by tentative contract forms on steel. The men who do not buy Pig Iron and Steel have no interest whatever in these contracts; therefore no benefit from them. But any one who does buy under contract would have some benefit from having order brought out of chaos now existing.

Other industries were sitting up and taking notice, and using it in their own lines but in other cities. Now I contend that even though some individual may not benefit from any one of those things, the business world does benefit from them and individually each and every one of us do profit from those things. Now very few men are of that type who feel, "Oh, well, the rest of them will do it; George will carry that burden, and I will sit by and profit from it." That is not human nature, and it is well for us that it is not. And I believe if we put that thought before the prospective members you will find they will not be long in coming in.

I believe that our Association is broadening out purchasing agents to a point where they get out of their shell and look around and take an interest in the management of the entire business concern with which they are connected. And I am glad to know too a number of individual cases where members of our Association have been picked out by their corporations and made directors, and in many of those that I know of it has been because those men have found themselves out first. In other words, they have opened up like a rose and have shown what was within them that was formerly buried, and after they had discovered themselves the corporation discovered them. My ambition is to see the profession so elevated and built up that all purchasing agents will be as much a part of the Board of Directors as is the President and Secretary. Now I have voiced this so often that it may be a chestnut to you. am not begging for myself now because that obtains in our corporation. The Board of Directors embraces our purchasing man, production manager, as well as the secretary and treasurer, and I believe that is an ideal arrangement because when the Board of Directors meets we get all inside information right from the Directors.

To my mind, one of the biggest problems of the National Association, as it is called, is to elevate the profession and put it on a plane where it will be a thing we will all be proud of, and if we accomplish one-tenth of what we see ahead of us as possible in that direction, it will pay nobly for any man in the profession to get in.

The Toastmaster before asking Mr. Justice Riddell for his address, asked all present to sing "O Canada" in his honor.

Mr. Justice Riddell

I can not say, as some do, that I am unaccustomed to public speaking; because this is the sixth audience which has this week favored me by listening to me. And I thought as I was sitting here that I ought to be peculiarly grateful to you because you are the first audience that I have been able to get a dinner out of. I am not sure that I shall make money by it because when my own particular purchasing agent at 109 St. George Street heard that I was going out to dinner at the King Edward Hotel, she decided she also would go out to dinner with a friend tonight. And you may take it from me when that lady undertakes to purchase, she is "some" purchasing agent. I am afraid too, some of you have come here under false pretences. I see the program says that I have been speaking "abroad." Utterly false! Absolutely baseless! I have not been speaking abroad or in any foreign country; I have been speaking in the United States of America. And no Canadian can call himself or allow himself to be called a foreigner or an alien in the United States of America. On the Northern shore of Lake Erie there are many arms of our beautiful land stretching towards the south, stretching out hands of kindness and brotherliness to the sister nation across On one of these points have stood for more than two centuries two beautiful pine trees, growing from the same root, rising side by side, a short distance apart, with trunks separate, but above, in the green, the ever-green, the limbs, and branches, and needles intermingle as one tree. Sometimes in storm, the concord is broken, the limbs rub against each other and there is grumbling and friction and antagonism, and some of the leaves may fall to the ground. But when the tempest passes by once again the leaves and branches and limbs intermingle with each other in harmony as of old, and the twin stems below nod to each other in sisterly harmony. For more than 100 years these two trees, sprung from the same root, have characterized the two nations living upon the opposite sides of Lake Erie. The lighter, although perhaps the more obvious part of our peoples, swayed by the gusts of passion, when feelings are excited, sometimes by a mere trifle, generally nothing but wind-they grumble and growl against each other, and we hear Americans jeering at Canadians and Canadians sneering at Americans. But when that passes by, Canadians and Americans mingle together as before as one people. And all through, the great heart of the people—the trunks of the trees—stand together in harmony, sprung from the same root, living the same life, proud of each other.

These are the nations of the United States and Canada, who are not foreign to each other. No Canadian crosses over into the United States, no American crosses into English-speaking Canada, but he finds himself at home,—once he is past the Customs officer—and perhaps once he has put his hand to his hip pocket and found IT still there. And, by the way, my friend from the United States utterly misunderstood what the Toronto gentleman said to him today after he had his lunch when he asked him: "Have you enough to last you for a while?" If that had been said to a Toronto man, he would have said: "No, I have only one little drink left."

That reminds me of a story, I suppose you know the Hip Van Winkle people—those people who have the hip pocket habit. One of those in the United States a short time ago had failed to put in a sufficient supply before that fatal day in January which hit them so hard, and for a few months afterwards, he lived a godly and temperate life, in which he was utterly inexperienced. He was asked to dinner by a friend: after the friend had dined and wined him, he gave him a small bottle, which

he put in that hip receptacle. On the way home he was run down by a taxi cab. He was pulled from under the cab by a policeman, who sked "Are you hurt?" After feeling his forehead which was cut, he said, "I am bleeding on my forehead," then he put his hand to his hip and said, "I feel something wet down there: I hope to God that is blood, too."

Now, my dear boys, I did not come here to talk to you such rubbish as that, but I simply couldn't help it for once because you may not know it, but actually I feel like one of the boys myself.

A short time ago there was a drama being played at Washington, in the Senate of the United States, which was being watched with anxiety by the whole civilized world. The question was being raised whether or not the United States should join in the Treaty of Versailles, should join in the League of Nations. And there was anxiety throughout the world. Canadians watched that drama with interest. They knew that the American people had a right to say themselves what they desired, it was their business whether they came into the Treaty or not, and we had nothing to say about it. I for one thought it was not very But there was one thing which hit the Canadian hard. which the American as a rule does not understand. It was in effect said that the United States will not come into the League of Nations if Canada comes in on a par. It was said in effect that Negro Hayti, Cuba which dare not call her soul her own, Panama which must do as she is told. Nicaragua, in charge of a few American marines, might be represented separately in a League of Nations, but Canada should not be. That hit Canadian pride hard. It was a serious blow to us. We felt it. We thought by our boys' work throughout the war, by what we had spent in blood and treasure, we had earned our place amongst the nations of the world and this, indeed, was admitted by practically everybody except by the one nation which we had thought was our best and nearest friend.

I don't blame the American people, they did not know! And I don't blame the American people for not knowing now because Canadians, nine out of ten of them, don't know the present position of Canada. And it is upon that I am to address you this evening. No man can understand the present international condition of Canada without knowing some of her history. History is said to be a dry subject. It ought not to be a dry subject. It is not a dry subject. It is the story of a nation, the history of her people. I could not in one address, or twenty addresses, give you the story of Canada, but I shall outline to you the story of the Constitution of Upper Canada alone, this province in which we live, and from that you can judge of all the other provinces.

When that half-crazy, wholly ill-balanced, ill-educated, pig-headed German King, George the Third, came to the throne of England, by the accident of birth and religion, he honestly believed that he was sent into the world to govern not only Britain but this continent. The American colonies did not wish to sever their connection with Britain, they did not wish to go from under the old flag, but the manner in which they were treated by that king and his advisers, was of such a character that in order to maintain their rights as free born Englishmen it was necessary that they should rebel. And they did, with the result which we all know. No man now blames the American revolutionists.

But, my dear friends, there were in what was afterwards the United States, a large body of men who were equally honest, who were equally fond of liberty, who were equally determined to have the rights of free born Englishmen, but who believed that by a constitutional course and means they would achieve these rights which were their own, and these men left the thirteen colonies when the independence of the United States was recognized. These were the United Empire Loyalists, of whom we in Canada are proud and justly proud. They who kept their

faith to England's crown and scorned an alien's name passed into exile. Leaving all behind except their honour, not drooping like poor fugitives, they came in exodus to our Canadian wilds. But full of heart and hope with head erect and fearless eye, victorious in defeat, with thousand toils they forced their weary way through the thick wilderness of silent woods which gloomed o'er lake and stream till higher rose the Northern Star above the broad domain of half a continent, theirs still to hold, defend and keep forever as their own, their own and England's till the end of time.

These United Empire Loyalists came over here in 1783, and afterwards, full of two ideals and thoughts and principles upon which Canada has built her national life and upon which her national life is built today, and please God, will be built forever more. One of these is: We shall not give up our share of the Old Flag; we shall not sever ourselves from the rest of the English speaking world; we shall not give up the traditions of those glorious centuries, for the most part of glory and honour; we shall remain British subjects, British subjects we are born, British subjects we will die. But equally strongly they held that other principle, which we hold so dear, We Shall and We Will Govern Ourselves. And upon these two principles and with these two principles this great Province of ours was founded.

For twenty-five years or thereabouts these men were too busy carving their way through the primeval woods, making a home for themselves and their families, providing for the future, building up a little store in case of need, to take much interest in the way the country was governed. And then it was governed by England. England sent out every two years a new Governor, and that Governor actually governed that province in the same way as governors had originally governed the thirteen colonies of North America. We all know the difference between the Governor of that and the Governor of the present time. Governor at the present time is so called because he does not govern. And they had another reason for not paying much attention to the government of the country, and that was that England was paying every dollar of expense of this province,—judges, governor, sheriffs, surveyors, every dollar of the expense of this country with the exception of what was paid on the roads and a few dollars paid to the members of Parliament who took care the very first session that they got paid, no matter what else.

In 1816 this province began to pay part of its own expense, and at once there was a disposition felt by the people to see how the money was being spent. And then an agitation arose which went on for twenty years to bring about what we call responsible government, which is the creation of the English speaking Anglo-Saxon people. In Responsible Government, as we all know, the people elect certain legislators, those legislators by a regular or an irregular, open or secret method, elect the leader of the government. The leader of the government selects the members of his government. These, so long as they can retain a majority in the House of Commons, or a majority of the Legislative Assembly, remain the government, and they tell the Governor what to do. That is Responsible Government.

Now that brings me to what I said a few minutes ago. In those days the Governor actually governed and the people had nothing to do about it. Under responsible government the Governor is so-called because he does not govern for the same reason that we in my boyhood days called a stream on my father's farm "Trout Creek" because there were once trout therein and there are none any longer; for the same reason that the ex-president of the United States was called Woodrow, because he would not row but insisted upon steering.

Well this agitation did not at first succeed and we had a rebellion in 1837. That is one thing Canadians will not have. Grumble about

their government! Of course. It is the inalienable right of the Canadian to grumble about everything, even his judges sometimes. A Canadian has the right to grumble about his government, no matter what government is in, but he will not submit to rebellion against the crown. He will not allow himself to be led into trying to separate himself from the Crown, that is from the rest of the British world. Francis Bond Head sent every British soldier to Lower Canada to fight the French Canadian rebels. The rebellion of 1837 in Upper Canada was put down by the people themselves.

Britain then sent out Lord Durham, and he found out by independent examination what no governor could find out, because a governor was only here for a few months or years at a time and had to depend on his advisers, and these advisers really formed a family compact and told him what they wished—Lord Durham found that Upper Canadians were not getting the rights of free born Englishmen, and he recommended responsible government. In 1841 the two provinces were united, and then responsible government came about. The king reigns; he leaves the ruling to the people to whom it belongs, thereby differing from the American president, who does not reign but is sometimes said to rule.

Now the British Constitution is the most marvellous constitution that the world has ever seen. It is not with any sneer, it is not with any sense of belittlement, but with a feeling of pride that I say the British Constitution is the most extraordinary piece of camouflage the The beauty of an unwritten constitution is that world has ever seen. we build more stately mansions on the old foundations; we graft new shoots upon the old dying stock and they sprout forth anew; we revolutionize the spirit and retain the old forms. The King of England has today the same means, the same titles, ostensibly the same powers as King Henry the Eighth. He is head of the army, he is head of the navyand he can't appoint a midshipman or a lieutenant. He appoints judges and ambassadors and what not, and he only sees them to kiss hands on their appointment. Out of all the hundreds of millions of British subjects in the world he can select any one to be prime minister, so long as he selects the one that the House of Commons tells him. It reminds one of that other wonderful piece of camouflage in the Church of Eng-Before the time of King Henry VIII of course the pope used to appoint the bishops; in the time of King Henry the Eighth a law was passed allowing the dean and chapter to elect the bishop. But a letter is sent down telling them whom they are to elect, and so since that time the dean and chapter of every cathedral has the right to elect anybody as a bishop so long as they elect the man that the King by his ministers tells them to.

Our system of government is such that if you find any thing laid down in perfectly plain English, in black and white so there can be no doubt about it, you may be absolutely certain that it is not so. The king can refuse to give his assent to any bill which has passed the Houses of Parliament, and no king has thought of doing anything of the kind since the time of William the Third. The king can appoint his min isters, judges, ambassadors, but he does that at the behest of the Government. We achieved Responsible Government as early as 1841.

Then in 1867 the provinces united. One of the reasons for this was the conduct of our friends across the line. From the earliest times the trade between the United States and Canada has been the most extraordinary piece of whip-sawing the world ever saw. We have never agreed as regards trade, except for a very few years. The United States would suggest something and Canada would say No, we will not have it, then Canada would accept and the United States would say No. And that went on until 1854, when Reciprocity was agreed to by both parties, and everybody thought the whip-sawing would end. Then came the Civil War, and during the Civil War Britain was not a great favorite in

the north. Although she was not a great favorite in the north, she was in still greater disfavor in the south. The position of a neutral in war times is not an easy one. The United States, wishing to punish England, but not being able to go across to England to punish her, they thought they would punish England through Canada. And the reciprocity treaty was abrogated. By that action of the United States the provinces of Canada were drawn together, and our trade, instead of going north and south across the international boundary, made its way east and west through Canada. We took in British Columbia, we took in Prince Edward Island, and we formed this great Dominion, stretching from sea to sea. And our commerce was increased, our goods were found in every mart, and our ships in every harbor and on every sea. Then the United States said it was time to stop this and in 1911 they offered us reciprocity and we said "Nay."

That is what we said in 1911. We had been trying for years to get reciprocity—the old story, once the United States were willing to give reciprocity we refused it.

Now in 1878 another step forward was taken. In 1877-78 was the election, which you have all heard of—the National Policy election. Before that time Britain had interfered with our tariff. The National Policy election was for the purpose of protecting Canadian manufacturers, and when John A. Macdonald was returned in 1878, and proposed protection at once the cry was raised by the English manufacturer: "You are striking at the Union between Canada and England, you are striking away the tie which binds the Empire together. Such a course as that is fatal to British connection." Sir John A. Macdonald, than whom no more loyal British subject ever breathed, said: "If that is so, so much the worse for British connection," thus serving notice upon the people of England that this country intended to run its own financial policy. And that is what we have done. We have had no interference with our Tariff since 1878, and no party, no individual in this country would now stand for it for a moment. We know our rights, we know we can govern ourselves and we intend to govern ourselves. We are an adjunct to no people on this side of the water or the other.

In 1887 another step forward was taken. Up to that time Canada had achieved her tariff independence—we were financially independent by that time. But we were only attending to our own affairs. We had no word to say as to what was going on in the other part of the Empire. The Colonial Conference was held in 1887. Canada was taking her part now in advising as to what the Great British Empire should do.

In 1897 another step forward was taken—some of you who are old enough will remember the election of 1896 when Sir Wilfrid Laurier was returned, and one of his cries when he went to the people was British Preferential Tariff. Well, you know what political platforms are—very much like the platforms of a railway car, fine things to get in on but not always fine things to stay on. But this time this particular plank at all events was stuck to. It turned out, however, that Germany and Belgium had treaties with Britain whereby they were entitled to the lowest tariff in Britain and her dependencies. According to international law, Canada was, and according to strict international law, she is today a dependency of Britain. Thank God, in the whole history of Britain there is no such damnable doctrine as calling a treaty a "scrap of paper." England has been called "perfidious Albion," but that was by Napoleon when he failed in his attempt to draw her away from her allies. Canada determined to abide by the treaties when she knew of them.

But in 1897, when Sir Wilfrid Laurier went across to the Colonial Conference, he said in effect: "this thing has got to stop." He was backed up by the other Prime Ministers. These treaties were denounced, the Preferential Tariff was arranged. Now you see, not only did Canada advise as to what was done in the British Empire, but her word was taken as

to what was to be done in respect of other countries, and she achieved another step in the evolution of her constitution.

In 1907 the Dominions got tired of the name Colonial Conference. In England I never allowed myself to be called a Colonial — I am a Canadian. (Applause). The name Colonial Conference was changed to Imperial Conference, and never since that time has any responsible British statesman spoken of these great Dominions as being Colonies. They are His Majesty's Dominions beyond the Seas.

And then came the war. Before this war there has not been a field on which British blood flowed since the conquest of Canada that some Canadian did not fight under the Old Flag, and very few in which some Canadian did not pay the supreme price of patriotism. Waterloo! Sebastopol—young Frank Simcoe, after whom Castle Frank in Toronto was called, laid his bleeding body upon the Breach at Badajoz.

In the Gordon War our men fought their way up the Nile—our men fought in South Africa in order that South Africa might be free. But they fought not as Canadian soldiers, but as British soldiers.

When in 1914 that nation, which had been preparing for forty years, made its tiger spring across the Rhine, on crucified Belgium and tortured France, and the cry went up: "Save us, for you promised to protect us," the great heart of Britain answered: "Yes, there is no scrap of paper in our ethics." And war was declared. Canada did not wait one hour till she sent across the Atlantic the message: "The last man and the last dollar." And in two months 30,000 Canadians were crossing the Atlantic as Canadian troops, led by Canadian officers, with Canadian horses and Canadian ammunition, and looked after by Canadian doctors and nursed by Canadian nurses, paid by Canada; and the widows and orphans of those who have passed away are pensioned by Canada as Canadian troops, because Canada recognized that this was her fight. It is not the whole truth that Canada went to the assistance of England. Canada fought for Canada and for the freedom of Canada and the civilization of Canada, as well as for the freedom and civilization of the rest of the world. And they fought as Canadians. Thank God for that evolution.

And when our men were dying by thousands it was thought—I do not charge anyone with any default—that in some cases they were badly led by British officers under whose charge they were—I make no charges, I only say what was currently reported in some circles—Canadians were dying by hundreds and thousands and it was recognized that Canada had a right to be heard, as to how the war should be conducted in which her sons were fighting and in which her sons were dying, and in 1917 the War Cabinet was formed of the Prime Ministers of Britain and the various Dominions. And Sir Robert Borden rightly said in addressing them: "We meet here as equals, each prime minister responsible to his own people, but we meet here as equals." And Canada had her say as to how the war should be carried on.

See the course of evolution, from the governor one hundred years ago, who was actually governor and spent English money in order to govern this province; now the people say who shall really govern. That government says how the war shall be carried on, and Canadians stand side by side with their brethren from New Zealand and South Africa and Australia, England, Ireland and Scotland, as Britons, and under the old flag, but Canadians.

I see that some are complaining that Canada calls herself a nation. I care nothing about words—I don't care tuppence about mere words. That people which has perfect control over its own destiny, that people which, while it remains a part of the British Empire, controls its own territory, which has a right to say who shall and who shall not fight, and where her soldiers shall and shall not fight, that people which has perfect

control over its financial and fiscal policy and can make such terms as it will with other peoples, I don't care tuppence whether you call it a nation or not, it is a good enough nation for William Renwick Riddell.

Now what does all this mean? Separation from the Mother Country? God forbid. I sometimes compare our position with that of two daughters who left their mother's home. One is asked: "Does your mother interfere with your household affairs?" "I would like to see her interfere with my household affairs! She would see where she got off." The other is asked: "Does your mother interfere with your household affairs?" "Why certainly not; my mother trained me to rule a household. She has her own. She knows that this is mine. Love and revere and venerate her as I do, she knows that she must not, and she does not desire to, interfere with my household." Canadians are of the latter class. There is a certain gentleman in this city, who calls himself a Canadian, who is not one either by birth or in feeling, who talks like the former daughter—"I would just like to see England interfere with Canada." You and I are not built that way. We know that what we want we have, and we intend to have it, and we know that Britain is more than willing and always has been more than willing that Canada shall govern herself in her own There is no more fear of Canada separating from the Old Flag than there was in 1783 when the United Empire Loyalists came across in tens of thousands from the colonies of the United States of America into this country of ours. There has not been a change since that time which has not found someone yammering of this or that as dangerous to British connection. Why in 1816, when Upper Canada began paying her own expenses, we had people in this province then who said: "When England stops spending money here, she will lose interest in you." In 1841 when responsible government was given the people, people in this province, the most educated, the wealthiest, the most experienced in public affairs, of the highest standing in every way, sent their very ablest men to England to prevent that kind of constitution, that kind of government because it would be fatal to British connection, put an end to British connection. And when the Dominion of Canada was formed up went the cry: "Oh, you are going to have a great big Empire here like the United States. You will be separated from Great Britain, and there will be an end to British connection."

When Sir John A. Macdonald determined that this country would run its own fiscal policy, the same thing. When the Colonial Conference was formed the same cry. And God knows, we could not change a stripe in our flag, I doubt if we could change a Governor-General without somebody yammering "Fatal to British connection." Perfect nonsense! The Canadian people are as determined to-day to remain part of the British Empire as they ever were; while in the future I can see this country growing in commerce and wealth and power and influence, I can see in a few decades this Canada of ours having more of a British population than the British Isles, I can see her becoming more and more influential in the Councils of the Empire, but I can't see her passing out from under that blood-red banner,—"The flag that braved a thousand years the battle and the breeze, Our glorious semper eadem, the banner of our pride." That is impossible for Canada.

We say to our friends in the United States: "Are we the kind of men that you want to tie up to? Do you seek and desire our friendship? Do you want us to be your friends? We offer you our friendship, we desire yours. We will not beg for it. Canada can stand four-square to the four winds of heaven and rely upon her own industry, her own intelligence. If she must stand alone, with God's help she can!" And we will accept the friendship of the United States on terms only of equality. We are no inferior people, and we will allow no person to speak of us as an inferior people.

Now what is there to-day? My friends, whether the League of Nations continues and takes in with it the United States of America, is to me a matter of no importance comparatively. The peace of the world depends not upon that League of Nations. The peace of the world, the prosperity of the world, the civilization of the world, the safety of the world, depend upon another League of Nations, that is the league of all the English-speaking peoples. Let Britain with all its millions,—Canada, Australia, New Zealand, Newfoundland, India,—let Britain stand side by side with the United States of America with one mind, one heart, one soul and one aspiration, and the peace of the world is absolutely secure, whatever other nations may do.

There is going on to-day a propaganda which is a curse to the world. There are those, not only in the United States, but in this country, who are stirring up feeling against Britain. There are those in the United States particularly who are striving with all their might to stir up old rancorous hatreds, bring back the old evil times when Britain fought with America, to make Americans believe that Britain is a tyrant, that she desires wealth and power, that she is not the noble nation we know her to be—and I use the words of a great newspaper,—he who stirs up strife between the United States and Canada is an enemy to the human race and a disgrace. Let us but stand together. I ask no formal treaty. There may be no written document, but there is that which is stronger and more enduring than a parchment bond, which is more binding than any words written by pen, there is that eternal law which proceeds from the throne of God Himself, which is more powerful than the natural law which God has impressed upon His creation. There is a moral law which is stronger and more certain than the law which conducts the planets. There is that moral law which says that two people like these, sprung from the same root, coming from the same people, speaking the same language, worshipping the same God, having the same ideals of justice, must necessarily stand; and if need be, march, and if must be, fight side by side in the cause of human liberty, justice and righteousness.

His Lordship here quoted:

"Sail on, O Union, strong and great
Humanity with all its fears
With all its hopes of future years
Is hanging breathless on thy fate,
Sail on nor fear to break the sea,
Our hopes, our hearts, are all with thee,
Our health, our hopes, our prayers, our tears,
Our hopes triumphant, e'en our fears
Are all with thee—are all with thee."

He applied the words of Longfellow concerning the Union of States to the greater Union of all the English-speaking world.

He continued: You all remember the words of Browning:

I walked a mile with Pleasure,
She chattered all the way
But she left me none the wiser,
For all she had to say.
I walked a mile with Sorrow,
And never a word spake she,
But oh, the things I learned from her,
When Sorrow walked with me.

We were walking with pleasure,—our eyes were fixed upon the transitory, the external, the unimportant,—joy, pleasure. Then came the war. And we walked with sorrow. Sixty thousand of our Canadian boys

will not come back to us—there is not a city, there is not a street in any city or town or village, there is not a hamlet or any countryside in which a wife or a mother or a daughter or a beloved does not mourn her dead. The wail of the widow and orphan goes up to the throne of God who sees all things, and God knows we have been walking with sorrow. The world can never be the same again as it was. Have we remembered then the essential thing which we got from that sorrow through which we have passed,—to know and to recognize the essential and the eternal? Do we see now that it is not wealth, it is not power, it is not a tremendous army or a navy with a ship in every water, it is not merchandise in every market, but it is Righteousness, that Exalteth a Nation? And has Canada learned the great lesson "The Fruits of Righteousness are Peace?" If she has, the lesson of that great war has been worth the price which we have paid for it, terrible as that price has been.

Now, my friends, may I call you my dear Canadian friends, just one word more. We were born, most of us if not all of us, under that great Flag flying over the British Empire, the greatest secular agency for good the world has ever known. Can we not all show in our lives that we live worthily, worthy of that freedom which it spells, that we shall try to make Canada great and clean and pure and righteous.

Live for your Flag, O Builders of the North, In precious blood, its red is dyed, Its white is honour's sign.
In weal or ruth, its blue is truth Its might the Power Divine.
Live for your Flag, O Builders of the North, Canada, Canada, in God, go forth.

The appreciation of those present at His Lordship's address was demonstrated with a right good will, ending with three cheers and a Tiger.

Toastmaster then asked Mr. A. V. Howland, of Boston, to address the gathering.

MR. A. V. HOWLAND:—Mr. Toastmaster and Gentlemen: I made a very special effort to come up here today and if I had heard nothing else during my stay in Toronto I should have been very well repaid.

Your Toastmaster has asked me to say a few things to those of you who are not members of a Purchasing Agents' Association.

Gentlemen, I was not always a National Association man, as you probably know. New England stood on its own feet. We were the first organization and we felt that we did not need the National. But we have now joined.

What can the individual purchasing agent gain from a local association? Here are some of the things that have happened in New England in the last year or so. During the car one of the corporations there in which I am interested wanted to get a certain piece of cable, and the president of the corporation's best delivery promise was three months. Now it was very necessary that we have that cable so he came to me and asked: "What can you do?" I said, "I can do better than that, but I don't knoc how much." I went over to the Purchasing Agent of that company. He took me in to the proper man, and I got that cable inside of three weeks. That more than paid my dues in that Association as long as I live.

In our Exchange Bureau, continued the speaker, we have succeeded in "thawing out quite a lot of frozen credit," as our banker friend called it this afternoon. I don't care how big a Purchasing Agent is, he will need the Purchasing Agents' Association. Now you men who are members of the Purchasing Agents' Association have something to sell. If you can't sell it to the Purchasing Agent go to his superior officer. You will sell him every time. You may not do it the first time but you will do it eventually. Therefore I say to men who are not members of this Association in Canada, you are losing an immense amount of good. I used to think what I would get out of the National was something that I would get individually, that is not so. You must treat your National dues something like you do your advertising—that you will get out more than you can ever put in. I hope all the men who are not members of the Purchasing Agents' Association will join, if for no other reason for their own good.

MR. LAMBERT DUSSEAU then favored the gathering with a solo Toastmaster thereupon asked Mr. L. F. Boffey, Secretary of the National Association, to address the gathering.

MR. BOFFEY:—Mr. Chairman, Ladies and Gentlemen: It has been your privilege, as it has been mine, to listen tonight to what is the most inspiring message I ever heard at any banquet. I wish that Mr. Justice Riddell's eloquence could have reached the ears of 110,000,000 Americans. If it had, I am sure that every right thinking man, woman and child of the United States would be proud to be accepted as friends by Canada on terms of equality. I think it would be both inappropriate and presumptous for me to try to distract your minds from the splendid thoughts of this eloquent gentleman. As a matter of fact, I feel somewhat presumptuous in rising to speak here at all tonight, and I rather think it should be my duty as it is a pleasure, to take from this convention the thought and the inspiration of your proceedings.

All through this conference you have symbolized the development of purchasing. When you are on your way home tonight, with the thoughts of this splendid message still ringing in your brain, consider, if you will, that the opportunity was yours tonight because the Purchasing Agents of the Dominion have learned the lesson of association.

In enumerating some of the accomplishments of the Purchasing Association, the speaker mentioned, the Standard Catalogue, the Standard Invoice, the Coal Contract, which he said, was characterized by men in the trade as a perfect agreement, and the abolishment of the Pittsburg plus system. We are trying, he said, to put purchasing on the plane of a real business science.

The speaker continued: The eminent speakers of this afternoon's session with their statistics and economic facts showed us clearly that while the world is staggering under its mountain of debt, wise and careful buying must prevail. The counsel of Purchasing Agents are bound to prove invaluable to individual, to your company, to your nation, to the world, because they are going to point the way whereby the dollars of industry will be spent so that they will prove of benefit to industry and to all people. When I go from here I will take with me the message which I have received, and which proves the breadth of Canadian minds. In industry Canada and Canadian Purchasing Agents are not content to follow; they lead. And in this they are faithful to the ideals and the inspirations which enabled Canada to take a leading part in the world war. I thank you.

MR. WEBSTER, of Montreal, then addressed the gathering as follows:

Mr. Chairman, Ladies and Gentlemen: I really asked permission to speak because I wished to represent the visitors who are here today. One feels very diffident in trying to make even a few remarks

after having listened to such wonderful eloquence and such an inspiring message as we have heard here tonight. I know we shall go home better men, better purchasing agents, better citizens of Canada, and better citizens of the world because we have been at this banquet and listened to THE SPEECH of the evening. In saying that I am not minimizing what the other men said, but I just wish to pay the special tribute to the speaker of the evening, and thank him for the inspiration of his remarks to me, and I am sure I am voicing your sentiments as well.

Mr. Chairman, this second convention has been a wonderful success, a great inspiration to the Purchasing Agents in general, and to the Purchasing Agents of Montreal in particular. We have benefitted very materially by association with you. We have benefitted by association with the men from Hamilton, and with the other men whom we have met and whom we hope we may number among our members before another convention is called.

I therefore wish to move, Sir, a vote of thanks to the Toronto Association for their kindness, for the wonderful entertainment which they have provided, for the splendid manner in which they have taken care of us, and at the same time I want to couple with that the invitation that the next convention should be held in Montreal. We will be delighted to entertain you, gentlemen, and I hope you will come in ever increasing This convention is very much larger in numbers than the one we had in Ottawa. I trust that the one which we hope will be held in Montreal will be even larger, and as we grow and expand we will absorb a greater amount of good from the fellowship which comes with association with good fellows, with men of honor, with men whose ethics are on a high plane, men whose ideals are so high that we may find them We want to keep our ideals well in advance of the difficult to reach. average and place our profession where we believe it ought to be. Chairman and Gentlemen, I thank you for your attention. I trust this motion of mine will be seconded, and I trust the visitors will give it a hearty response.

As the Toastmaster, Major Bell, was a local man, he asked MR. CHANDLER to take the Chair, after the seconding of this motion, which Mr. Ogilvie did as follows:

Mr. Chairman, Ladies and Gentlemen: I had figured after I got through this morning my work was done. However, I could not let this occasion pass without getting on my feet to second this motion, and in doing so I want to express particularly the appreciation of the Hamilton members who came down here and who have enjoyed every minute. Our good friend, Mr. Howland, said that he travelled forty hours to get here and it was worth while. I have only travelled forty miles but I can assure you if I had known what I was going to hear here tonight I would have travelled ten times forty. It has been a great inspiration, one which I shall never forget.

Mr. Chandler thereupon asked the visitors to rise and demonstrate their assent to the motion in the usual way, which was done, and Mr. Chandler tendered the vote to the Toronto members.

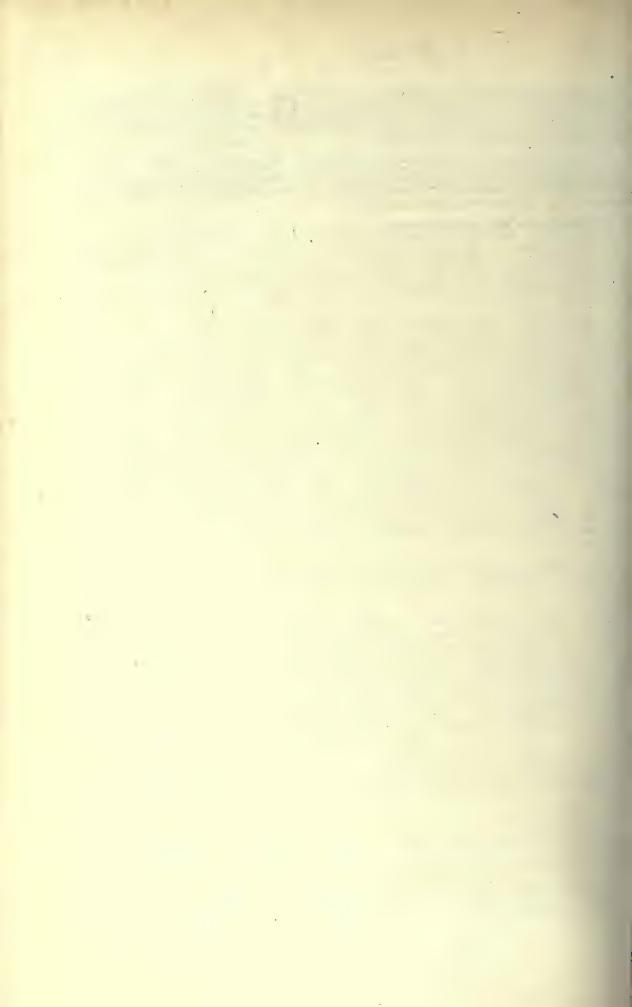
MR. LUCAS responded as follows:

Mr. Chandler, Ladies and Gentlemen: I can assure you that a resolution of thanks to the Toronto Association is not what we are looking for. We started out to entertain today the members of the Purchasing Agents' Association in Canada along with those who we considered should belong to the Association and to whom we extended invitations to come to our Convention and see how we conducted our

business. It is indeed gratifying to receive the appreciation from our guests, and we certainly hope that your stay with us has been profitable and that we may all meet together in a similar convention in Montreal next year as suggested. (Applause).

At the request of the Hamilton members, Toastmaster Major Bell, asked Madam Dussault if it would not be an imposition and the smoke had become too annoying, if she would favor the gathering with another solo. This she did with two encores.

The gathering then dispersed.



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of cutting down expenses is often as urgent in a large community as in a smaller one, and if this can be done by reducing machinery without loss of either efficiency or safety it is worthy of emulation. The aim of those who strove for an elective Legislative Council was to secure a Second Chamber that could claim equally with the Assembly to speak for the community but so constituted as "to reflect their settled wishes and principles rather than their transitory impulses." To this end they sought. on the advice of the Duke of Newcastle, to create two constituencies, the one to reflect the wishes of manhood suffrage. the other to reflect the more sluggish interests of property. But in due time they discovered that these two constituencies might be represented better in one chamber than in two. would save expense was obvious. But more important still was the fact that the representatives of property, having the greatest stake in the country, could exercise a restraining influence upon those with more transitory impulses in the same chamber; and that, by coalescing with the normal party groups there, they could do so without creating suspicion of class consciousness or of a family compact. In this way the Council, which had known a stormy life of six score years and three, passed quietly to a new life under other conditions. Its passing was more interesting than its life and the manner of its death might well be imitated by other Second Chambers.

2. OSGOODE HALL

BY

THE HON, WILLIAM RENWICK RIDDELL

One of the best known and most interesting buildings in Canada is Osgoode Hall in the City of Toronto. There the Superior Courts of the Province have sat for more than ninety years, even before there was a City of Toronto or a Province of Ontario. In 1832, when Osgoode Hall became our "Palais de Justice," there was only one Superior Court in the Province of Upper Canada, the Court of King's Bench. Created in 1794 to take the place in civil matters of the four Courts of Common Pleas, which had been formed one in each District by Lord Dorchester in 1788, the Court of King's Bench had sat at Newark (Niagara-on-the-Lake) until 1797, when it removed, much to the disgust of Chief Justice John Elmsley, to the new capital, York.

It sat in a room in the Parliament Buildings at the foot of Berkeley street until these buildings were burned by the American invader in 1813—the judges never satisfied, indeed, but

unable to procure better accommodation.

The Court followed Parliament to the northwest corner of what are now Bay and Wellington streets, then to buildings on the old site in 1818, until they were accidentally burned in 1824; then to rented rooms, until the new Court House was built in 1826, the foundation stone of which had been laid in the former year. This was on what afterwards was known as Court House Square on the north side of King street, just east of Toronto street.

It was not, however, the needs of the Court which occasioned the erection of Osgoode Hall. A few years after the creation of the Court of King's Bench, another entity was brought into existence by legislative fiat; in 1797 the Law Society of Upper Canada was formed which still flourishes and is an instrument for good. The "Benchers" or governors of that body, after the initial meeting at Wilson's Hotel, Newark, July 17, 1797, held all their meetings at York; these were generally held in the office of the Attorney-General or the Solicitor-General, although some were held in the office of the Clerk of the Crown, at the Court House or the Library of Parliament.

It was, however, recognized that some permanent home should be formed for the Society; and, in 1820, a plot of land

on the southeast corner of King and Church streets was bought for the purpose of erecting thereon a suitable building. At the instance of the Attorney General, John Beverley Robinson (afterwards Chief Justice Sir John Beverley Robinson, Bart.), the name "Osgoode Hall" was selected for the proposed building. The name was in compliment to William Osgoode, the first Chief Justice of Upper Canada, 1792-1794, and Chief Justice at Quebec, 1794-1802. For some reason not apparent the site was, later, considered unsuitable. Nothing was done towards building upon it.

The scheme was enlarged, and by 1825 it was proposed to erect a building to accommodate not only the Law Society but also "the Court of King's Bench with all necessary apartments according to the importance and dignity of its functions," a "building worthy of the Province and its seat of Government." The Benchers were willing to pay as much as £2,000 (\$8,000) towards the project, expecting the Government to pay the balance and provide a site. This plan for a time seemed to be in a fair way of being carried into effect, but, in 1828, the Society came to the conclusion that nothing satisfactory could be done in conjunction with the Government. Accordingly in that year Convocation bought from the Attorney-General six acres of land for £1,000 (\$4,000), and struck a Committee of Management for approving plans, making contracts and superintending the erection of the building.

But the project lagged and it was not until February, 1832, that Convocation could meet in the building; on the same day the Court of King's Bench took possession of the part allotted. The "Osgoode Hall" of that day was part of the present East Wing. It contained chambers for barristers and students, with board, and was occupied in 1832.

In 1833, the part of Osgoode Hall in the centre below the present Library was built "to afford twenty-four comfortable bed-chambers with stair-case and passages and eight commodious offices." From 1838 until 1843, the hall was occupied as barracks by the troops. When the Law Society regained possession in the latter year, it expended £100 annually for some years in erecting the present very handsome stone wall and iron fence.

It was determined, in 1844, to enlarge the building and, in that and the following two years, were built the West Wing and 53738-3

THE CANADIAN HISTORICAL ASSOCIATION

the Library in the centre with two domes connecting the two wings. An addition northward was made, in 1856, to the West Wing; and by 1860 the Osgoode Hall as it stood before the extension northward of both wings and centre, was completed. The dome was removed from the centre and a facade of Caen stone set up, while the whole interior was remodelled.

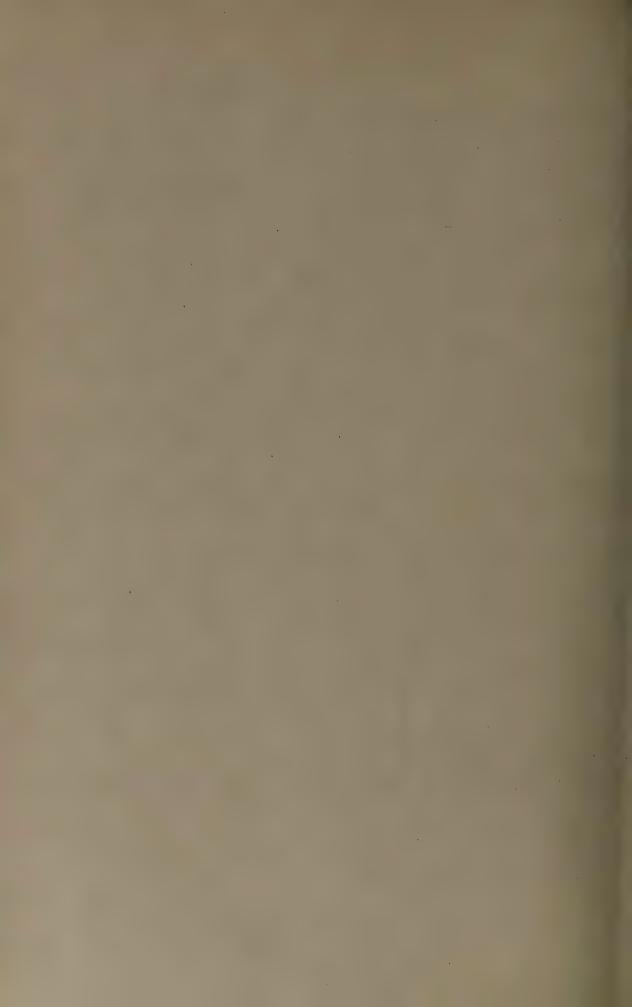
The Century of Peace and Its Significance

The Honourable William Renwick Riddell, LL.D., Etc.

Justice of the Supreme Court of Ontario.



April the Seventh Nineteen Hundred and Fifteen



The Century of Peace and Its Significance.

The Honourable William Renwick Riddell, LL. D., etc., Justice of the Supreme Court of Ontario.

April 7, 1915.

Some weeks ago I received a request from the Women's Canadian Club of this city to deliver before them the address I had given before the Oberlin College, Oberlin, Ohio, a short time previously. It is needless to say that it was a great pleasure to accede to the request; it must be a delight to every true Canadian to know that our women are not behind their brothers in Canadian sentiment. Then came the invitation from you to speak before your Club—and I know of nothing, in this time of terrible war, which should be of greater interest than the Century of Peace which has existed

on this continent, so far as concerns Canada and her neighbor to the South.

What I shall say to you will be in substance what I said at Oberlin, and at the Conservatory this afternoon. The tale is a fascinating one, and does not lose interest from repetition.

The extraordinary spectacle of an international boundary of nearly four thousand miles existing for a century without a fortification and without even a garrison post has rightly attracted the attention of the civilized world. In length, in period of existence and in



HON. WILLIAM RENWICK RIDDELL, LL, D,

the pacific relations of those on either side, this boundary line in unique, the miracle of the nations and of the ages. How has this peace been preserved? Within the past few months, I have taken part in the celebration at Plattsburgh and New Orleans of noteworthy battles; I said at these places that the battle of Plattsburgh made peace possible and the battle of New Orleans made it palatable, and therefore permanent. I have no doubt that these statements are wholly true, but they are not all the truth, for very much more than battles went to both the birth and the long life of that peace.

The length of this remarkable and unexampled boundary rests upon geographical reasons, its period of existence and the relations between the peoples on each side of it, upon the characteristics of the peoples, their ideal of life and of

international conduct.

Much has been said-not too much-of the identity of

the language of the two peoples.

We are told by those who should know that no one can understand the genius of a people who cannot think in their language and speak it. There is no little truth in that proposition, strange as it seems at first hearing. For myself, reading but not speaking German, I find it impossible even to follow the reasoning of some of the Apologiae recently put forth from that land and I hope I fail to understand precisely what the Germans desire to attain through this war. To show that I am not singular in this incapacity, let me quote what has been recently said of and by Charles Francis Adams, an American of the Americans, a real statesman and scholar of the highest type. In the New York Evening Post I find the following written immediately after his death: "He was intensely alive to all that was going on in the world. Needless to say, the European war set all his fibres tingling. His general position of hostility to the Germans was made known in letters to the English press. They were naturally more restrained than his personal talk and correspondence. From a private letter written by him no longer ago than March 13, the following characteristic passage may be taken; it was Mr. Adams' comment upon the assertion that Americans do not understand Germany because they 'cannot think like Germans':

"Suspecting this in my own case, I have of late confined my reading on this topic almost exclusively to German sources. I have been taking a course in Nietzsche and Treitschke, as also in the German Denkschift, illumined by excerpts from the German papers in this country and the official utterances of Chancellor von Bethmann-Hollweg. The result has been most disastrous. It has utterly destroyed my capacity for judicial consideration. I can only say that if what I find in those sources is the capacity to think Germanically, I would rather cease thinking at all. It is the absolute negation of everything which has in the past tended to the elevation of mankind, and the installation in place thereof of a system of thorough dishonesty, emphasized by brutal stupidity. There is a low cunning about it

too, which is to me in the last degree repulsive."

No doubt those who speak the same language understand each other as they could not, did they require an interpreter. But that cannot fully explain why the peace has been kept. Athens and Thebes had substantially the same language; Sparta's was not more divergent from it than Lowland Scotch from English; yet Athens and Thebes and Sparta were seldom at peace inter se. Before the Union of the Crowns in 1603, England and Scotland were very frequently at war, but their language was practically the same. Prussia and Austria had to fight out their differences fifty years ago. Our common language enables us to know each other, indeed; and Charles Lamb indicated a profound truth and one creditable to human nature when he said, "I cannot hate a man I know." But there was more than language.

Identity of descent had some effect, but 1776 and 1860, the Revolution and the Civil War, furnish a conclusive proof that that was not enough. Nor was identity of religion—for

witness Austria and France, Britain and Germany.

It was the fundamental conception of international right

and duty.

There are only two principles of international conduct worth considering: The first, "Might makes right; Might is Right. I can, therefore I ought and will." The other, "Right is Right, and because Right is Right, to follow Right

were wisdom in the scorn of consequence."

The first of these is the principle of primeval man vindicating his claims by his own strong right arm, they "should take who have the power and they should keep who can." No community could exist in which this principle was allowed to continue as the governing principle in matters between man and man; and accordingly within the clan there must needs arise some rule by which right should be determined—Right must in some way appear other than by mere force and violence. Every nation, even the most savage, has such a rule for its members; no nation which has none can endure.

But in international matters, for long no such law was sought or applied. You will remember we learned early in our Latin classes that the original meaning of "hostis" was stranger, out-lander, but that it early acquired the meaning "enemy," as all strangers were accounted enemies. This feeling is not dead, even within the nation. Who does not appreciate the dialogue Punch gives us between two pit-men? "Dost knaw im, Bill?" "Na." "Eave 'arf a brick at 'im, fettle 'im.'' The foreigner was an enemy against whom everything was permissible, violence and destruction even laudable; the foreign nation had no rights which one's own nation was bound to respect. While international law has arisen and made some advances, it is but a wan etiolated simulacrum of law as applied between citizens of the same nation. It has no court which can effectually summon an offending nation, no powerful police to enforce its mandates. Accordingly we must at all times expect that the strong nation may become an aggressor and that sometimes the only right underlying an attack will be might.

The other principle is but an extension to international concerns, of the morality and the rules adopted between in-

dividuals: Right is Right.

A course of conduct may be right for several reasons; it may and its opposite not be in accord with the eternal principles of the moral law; or, indifferent ethically, it may be in accord and its opposite not with positive legal precept; or both ethics and law being silent, it may be prescribed by agreement. An act transgressing the moral code, the legal code, the contract, is wrong. The people who commit it may be strong, irresistably strong, learned, wearisomely learned, pious, ostentatiously pious, may make many excuses, explanations, what not—they stand a transgressor and a criminal in the face of Almighty God—or there is no Almighty God.

With Might as the determining principle, the stronger nation demands what it desires, the weaker temporises and ultimately gives up what it must or has that taken from it irrespective of the rights and wrongs. The stronger is the

ultimate and final judge of what it is to receive.

Where Right prevails, the matter in controversy may become a subject for diplomatic consideration indeed, and the question is not uncommonly apparently only, "How little can I get off with giving up?" but the substance al-

ways is, "How much should I in justice give?" Might takes, Right gives. With two nations actuated by the law of Right, most matters can be adjusted without much difficulty; if diplomacy fail, the matter in dispute may be determined

by some tribunal.

This method is wholly inconsistent with the principle boldly and baldly laid down by an ex-President of the United States that "to a State a favourable verdict by a Court of Arbitration can never be equivalent to a victory won by war." Such a principle is at bottom based upon the hypothesis that war is a good in itself—a hypothesis supposed to be founded on the immutable laws of nature—and human nature.

We have in these days seen it stated, "War is in itself a good thing. It is a biological necessity." "Efforts for peace would, if they attained their goal, lead to general degeneration, as happens everywhere in nature where the struggle for existence is eliminated." "The State is justified in making conquests whenever its own advantage seems to require additional territory." "In fact, the State is a law unto itself. Weak nations have not the same right to live as powerful and vigorous nations."

These propositions smell of the bottomless pit, but repugnant as they are to our sense of right, they are wholly intelligible; as is the principle which necessarily flows from them, a principle also most unflinchingly advanced, that the individual exists for the State, not the State for the individual—a recrudescence of the ancient and outworn theory of the Greek to which many of us thought modern civili-

zation had given its quietus.

It seems to me that the course of dealing between the United States and Britain—among the English-speaking peoples—shows that the rules by which they have governed themselves in their international relationships are those prescribed by the laws of justice and right. I do not at all mean that in every case this was so. Humanum errare est; homo politicus is not always homo sapiens; in too many cases, patriotism, always unjust, has misled the statesmen on one side or the other; "My country, right or wrong," is a convenient rule to follow in peace as in war, and those in authority have not always been "too bright and good for human nature's daily food." And, too, while our methods of choosing rulers are as good as any yet devised, popular opinion is fallible, mistakes are made, the

fool ye have always with you, and one fool can do more mischief in five minutes than ten wise men can set right in

a year.

Sometimes, indeed, mistakes have been made by reason of the pace with which operations must necessarily be carried on in time of war. Sometimes the rights of the belligerent have been placed a little too high, those of the neutral a little too low.

Outside of my window at Osgoode Hall are drilling day by day from dawn to dark the flower of the youth of Canada, destined to become the target of cannon, shot and shell. Many of these I know, many are the sons of my best friends, they are mine own people, mine own flesh and blood; and when I see them preparing themselves for a struggle which must to many mean wounds and agony and to no few death, even I, Judge as I am, cannot look with too critical an eye upon means which may shorten that struggle and save these young heroes for their country even if a neutral may not make quite so much money as he otherwise would or might. In a struggle for national existence a mere question of dollars and cents and neutrals' profits. becomes of infinitesimal importance. If to bring a war to a successful termination, neutral trade must be made to suffer, it will, in most cases, be made to suffer. Blood is thicker than water, but it is also heavier than gold.

But we have on both sides drawn the line at the slaughter of unoffending non-belligerants. Sometimes each nation may have unduly harassed the commerce of the other but never has either descended to the murdering of innocent women and children and the destruction of peaceful mer-

chantmen.

I do not assert that either nation has always been blameless in its conduct toward the other. Still less do I say that in dealing with other nations we have always been actuated by the highest or even by proper motives, that we have always been free from the sin of coveting what is our neighbor's or that all our wars were just. I am as little inclined to boast of the Opium Wars as an American of the Mexican expedition seventy years ago.

But exceptis excipiendis and speaking generally, I have no hesitation in saying that both nations have, in their dealings with each other, sought the right; the right whether declared by the law of God or the international law of human convention or determined by previous agreement. A

scrap of paper where a name was set we have held "as strong as duty's pledge or honour's debt." Unless I am wholly mistaken, it is precisely this ideal of international conduct which has preserved for us the peace for a hundred years.

It is rather remarkable that very much of the diplomacy was in reality a commentary on the written word of Treaty. The substantive Treaty of Peace, September 3rd, 1783, had laid down as one boundary the River St. Croix. No lines were drawn on a map to indicate what river this was, no note made by the commissioners as what they meant; and at least two rivers might reasonably be considered to bear the name. In the United States, the feeling was as strong then as now, that "no foot of American soil can pass from under the starry flag "; Britain had for generations said as she now says, "What we have, we hold." All the elements existed for "a just and necessary war"; but the two nations thought it a question of fact to be determined by judges, and so, most tamely—some fire-eaters said, most ignominiously-restrained their armed forces and submitted the matter to three lawyers. David Howell, Judge of the Supreme Court of Rhode Island, and Thomas Barclay, of Annapolis, Nova Scotia (a pupil of John Jay's, who had remained loyal to his sovereign and his flag, and when the cause was lost, had cheerfully passed from his native land into Nova Scotia and taken up life afresh), were chosen. They two selected as the third, Egbert Benson, formerly a judge of the Supreme Court of New York, and afterwards judge of the Circuit Court of the United States, because he was "cool, sensible and dispassionate."

This board illustrates the wise practice of selecting as commissioners those who were skilled in interpreting written documents. A very great part of the lawyer's duty is to interpret that which is written—in Constitution, in Statute, in contracts and in the decisions of the Courts. No one should be better fitted to decide questions of disputed construction than lawyers; and consequently lawyers, whether judges or otherwise, have almost invariably been chosen

for that function.

At that time as a't all times, there was a party opposed to peaceful determination of disputes. Can you not see the indignation, hear the outraged cry of true patriots on either side of the Atlantic at this "mollycoddle" way of determining a question of national territory? For

how could any true lover of his country bear to have her rights determined by anyone who is "cool, sensible and dispassionate"? Why not adopt the easy code: "I wanted that land and I took it"?

This was before the war of 1812, which was brought to

an end by the Treaty of Ghent, December 24th, 1914.

In this treaty the commissioners agreed to the terms of the status quo ante bellum. There were, however, a few matters in dispute which they were not able to determine, and which, in the interests of peace, should be determined. Thereafter the international relations of the two peoples are largely a commentary on the Treaty of 1783, the Treaty of Ghent and the later Treaty of Washington of 1871.

The precise position of the boundary line has been in controversy more than once. Down in Passamaquoddy Bay there were some islands claimed by both the province of Nova Scotia and the state of Massachusetts, a splendid chance for war for "inalienable national territory." true ownership depended upon the interpretation of the Treaty of 1783; and the two governments determined to leave the matter to two lawyers. Thomas Barclay was one -him we have already met; the other, John Holmes, who had served several terms in the Massachusetts Legislature, and who was, when in 1820 Maine was admitted as a State of the Union, selected to represent her in the United States These two, like sensible men, gave up each a part of his individual opinion, and divided the islands, giving Moose, Dudley and Frederick Islands to the United States and the rest along with the Grand Manan to Nova Scotia. No word of complaint has ever been heard raised against the decision unless we are to credit the story that President Taft thought a few years ago that it would have been infinitely better had Moose Island not been awarded to the United States.

Then the boundary at the Great Lakes was not quite certain; and again Commissioners were appointed to settle it. Anthony Barclay (son of Thomas, whom we have met and shall meet again), took the part of British Commissioner in the place of John Ogilvy, who died at Amherstburgh, Upper Canada, from a fever contracted in the discharge of his duties. Peter Buel Porter, who had practised law at Canandaigua and afterwards had been a very competent commander in the war and who was to be Secretary for War in John Quincy Adams' cabinet, was the other.

They made an award at Utica, in 1822, wholly satisfactory

then and now to all parties.

A very difficult question of boundary still remained, "The North-eastern Boundary." The Treaty of 1783 spoke of the "Highlands," and the two nations could not agree on where the "Highlands" were. Thomas Barclay and Cornelius P. Van Ness, afterwards Chief Justice and Governor of Vermont, who were appointed Commissioners, were unable to agree; and the question was left, in 1827, to William, King of the Netherlands. His award in 1831 was not satisfactory to the United States, and Britain agreed not to insist upon it. After considerable negotiation, Lord Ashburton and Daniel Webster agreed upon a line (in 1842) which has been acted upon ever since. This line was and is exceedingly awkward for Canada, an elbow of Maine sticks up into her ribs, and her Intercolonial Railway has been compelled to make a long detour to avoid American territory, while there is no corresponding advantage to the United States. But the line was agreed upon and the matter is settled.

This controversy illustrates, it seems to me, our manner of thought. The boundary as defined by the Treaty of 1783 neither party at any time attempted to get away from "Scrap of paper" as it was, it was a contract, and therefore sacred and binding. When it was found that the words employed were not sufficiently definite to make clear the precise boundary intended, there was still no threat of war, much less forcible entry. Two commissioners were selected, lawyers of eminence, to find out exactly what was meant. They disagreed—a disagreement which might quite naturally arise from national feeling and prejudice: it was left to a foreigner—a foreigner in such high position that no thought of corruption or dishonesty could arise. His award was claimed by the United States as not having been made on the proper basis. Britain, in view of this claim, instead of insisting on the award (as technically she might), agreed to disregard it. I have thought that her conduct on this occasion may well be likened to that of the United States but last year. Britain claimed that the United States had bound itself not to give any advantage to its own ships in the Panama Canal; the United States took another view of the treaty and made regulations by which certain ships of the United States had an advantage. But on consideration of the view taken by Britain of the treaty, it reversed its

action and without assenting to the validity of the British contention, acceded to it because the other party to the treaty thought that was what the treaty meant; nor was the plea of change of circumstances, earnestly pressed as it was, even listened to. May I, as one who knows something of the American people, say that to my mind they never rose to a higher plane of international good faith than when they said to Britain, "You thought we meant that, so let it be"? But as a Briton I venture to point to a precedent for this action, eighty-five years before, little known and little thought of.

One school of politicians would say that both the nations

were fools. What say you?

Some look upon the act of giving an advantage to American vessels in the Panama Canal as a "Yankee trick." Well, in 1871, by the Treaty of Washington, Article 27, the Queen agreed to urge the government at Ottawa "to secure to the citizens of the United States the use of the Welland, St. Lawrence and other canals in the Dominion on terms of equality with the inhabitants of the Dominion." We did make uniform tolls for all ships, American and Canadian—and then repaid the Canadians their tolls! Was this a "Canadian trick"? We had the grace to be ashamed of our sharp practice and to repeal the obnoxious provisions so as to put all on the same level. So did the Americans last year.

This was by no means the end of the territorial disputes. The international boundary was, as we have seen, settled by Commissioners at the east and through the great lakes and international rivers through the Lake of the Woods. In 1818, from the Lake of the Woods to the Rocky Mountains the parallel of 49° N. L. was agreed upon through diplomatic means; but west of the Rockies the line was in dispute. Britain claimed as far south as the mouth of the Columbia River, between 46° and 47° N. L., the United States as far north as 54° 40'. The convention of 1818 allowed the citizens of each nation to settle in the disputed territory. Attempts were made in 1823 and 1826 to fix the line, but in vain. In 1827, the arrangement as to settlement by either people was renewed indefinitely. Polk's election was fought on the slogan "Fifty-four forty or fight." Polk was elected, but no fight came on, although Britain firmly refused to assent to fifty-four forty. In those days and in that country pre-election pledges were not invariably implemented, as of course they are in our day and in our land. Both parties thought it better to compromise and (in 1846), they agreed that the line of 49° N. L. should be extended to the Pacific. Of course the jingoes on either side were outraged, each government was charged with craven submission to unjust demands of the other; true national feeling was again dead and the doom of the empire—or the republic—was sealed. The story is told—I do not vouch for the truth of it—that Pakenham, the British Ambassador at Washington found that the salmon in the Columbia River would not rise to a fly, and thenceforward considered the river of little value.

Even yet the whole trouble was not got rid of. Treaty of 1846 had fixed the line at 49° "westward to the middle of the channel which separates the continent from Vancouver Island, and thence southerly through the middle of the said channel and of Fuca's Straits to the Pacific Ocean." Geography has a way of laughing at diplomacy. There were three channels, any of which might fairly be called the main channel. Britain claimed that nearest the mainland, the United States that nearest Vancouver Island, and the intervening islands were the bone of contention. In 1869 it was arranged to leave the dispute to the determination of the President of Switzerland, but the Senate refused to agree—the irritation which arose during the Civil War had not been allayed. British subjects settled in San Juan Island; General Harney landed an armed force and took possession of it for the United States; Britain had men-of-war available, and only prudence and forbearance prevented an armed conflict. But there was no war; a peaceful joint occupation was agreed upon, and in 1871 the Emperor of Germany was asked to decide the channel. This he did the following year in favor of the United States, and Britain withdrew.

Then came the last dispute as to territory. The boundary of Alaska was for some time in doubt. Joint surveys agreed upon in 1892 did not satisfactorily determine the true line, for it was not a matter of surveying. At length, in 1903, the determination of the boundary was left to six "impartial jurists of repute" who made an award in the same year. The award was not received with much favour in Canada; much complaint was made that some of the American commissioners were not "impartial," and that the award was not in fact judicial. No objection could be

taken to the British commissioners—Chief Justice Lord Alverstone, Mr. Justice Armour, of our Supreme Court (who had been Chief Justice of Ontario), and Sir Louis Jette (who had been Chief Justice of Quebec). President Roosevelt appointed Senators Root, Lodge and Turner, none of them a Judge. That I may be perfectly fair I quote from Hon. John W. Foster, who was the agent of the United States on this occasion. In his "Diplomatic Memoirs," 1910, Vol. II, pp. 197, 198, he says: "The Canadian government complained * * * * that the members nominated by the President * * * * were not such persons as were contemplated by the treaty, to wit: 'impartial jurists of repute' * * * * It was alleged that one of the American members had expressed himself publicly some time previous to his appointment as strongly convinced of the justice of the claim of his Government. It was also objected that no one of the three was taken from the judicial life and that they all might be considered as political, rather than legal, representatives of their country. The editor of Hall's International Law (Edit. 1904), refers to the selection of the American members as 'a serious blot on the proceedings.'" Mr. Foster does not attempt to justify the act of the president. I agree with the editor spoken of and think that the great exponent of the "square deal" could not have done a more dishonest and unfair act. I have never heard an American justify it. It has been explained (whether truly or not, I cannot say), by the alleged fact that it was only by promising such appointments, that Roosevelt was able to get the Senate to pass the Treaty. However that may be, our own subsequent conduct furnishes the Americans with a fair retort. On the death of Mr. Justice Armour, Britain appointed in his stead, Mr. Aylesworth, who had been engaged as counsel in the very case, and who, deservedly high as he stood, and stands in public estimation, could scarcely be considered more impartial than was any of the Americans.

Let me pause here to say a word as to the conduct of the United States throughout the century. We have a small but active class who make a practice of girding at the "Yankees," as they call them. In my boyhood, we resented the arrogation to themselves by the people of the Republic, of the appellation "American." We were born in, or at least lived in, the continent of America equally with them, and equally with them were entitled to be called American. But Canada has come to her own, has become

conscious of her nationality and of her great destiny, and the name Canadian has become a badge of pride. If one searches the records of the past he will find that the people of the United States have always been called Americans by those of the mother country—and I for one am quite content with the name Canadian, leaving to our friends to the south the name American, in common with the other non-Canadian occupants of this continent. The class I have in mind almost invariably say "Yankees," when they mean "Americans," and can generally be identified by that terminology, although it is as absurd to call all Americans "Yankees," as it would be to call all British "Scotsmen." That class make it a point to speak of Yankee dishonesty in our international relations. made a careful study of the history of these matters, and while it cannot be said that the United States was generous and brotherly, or went out of its way to show its friendship, the claims made have invariably had some colour of justice, they have not been wanton and gratuitous, nor less well founded than many of our own. And in the appointment of arbitrators, the Alaska appointment by Roosevelt stands by itself—and probably no one but a noisy advocate of fair play could have made it.

We did object to such a board and the award made by that board; but there never was a thought of disputing its

validity or of refusing to be bound by it.

So we have fixed our four thousand miles of boundary without a fight, without the effusion of one drop of blood, and almost without even the lingering remains of a tem-

porary irritation.

The rights of fishing have also been in controversy. By the Treaty of Peace, 1783, certain rights were given to American citizens in the Atlantic fisheries. These were not so much mentioned in the Treaty of Ghent of 1814 (the story is a curious one, but too long to be entered upon here); it was claimed by Britain that after the War of 1812 Americans had no right to fish in British territory, and a rather dangerous dispute arose. In 1818, however, the matter was arranged by diplomacy, and the limits within which Americans might fish were laid down. When the Reciprocity Treaty was made in 1854, the advantages given up in 1818 by the Americans were restored so long as that treaty should be in force; and an international commission was provided for, which should lay off the limits within which

Americans should have the right to fish. In 1866 the United States denounced the Reciprocity Treaty and these rights were lost. But who ever heard of a fisherman who could distinguish between his neighbor's pond and his own? Or who, when his own waters were fished out would be content to fish away there without trespassing? Or who would cease fishing where he had been accustomed to fish, on account of change or ownership or any such trifle as that? Not unnaturally the American fishermen trespassed, and this caused no little irritation between the two peoples. In 1871, by the Treaty of Washington, the amount to be paid by the United States for this improper and illegal fishing was referred to three arbitrators; and they in 1877, made an award at Hali-The amount, five and a half million dollars, rather startled the United States, but it was paid within the time allowed by the Treaty.

The convention of 1818 had given to American citizens certain rights of drying and curing fish, etc., not very definitely expressed; and constant friction arose over these matters. Then there were questions concerning the right of the British Colonies to make regulations as to fishing, bait, etc.; and generally the "fishing on the Banks" was a perpetual subject of diplomatic correspondence and controversy, charges and counter-charges of wrong-doing and unreasonableness. At length it was decided to leave the whole matter to a tribunal chosen from the members of the Permanent Court at the Hague—an American and a Canadian judge, an Austrian professor of law, a Dutchman and an Argentine, all "jurists of repute." Their award in 1910 was so satisfactory that both parties were triumphant, each hailed the decision as a victory for its side, and for once no

one thought of "cursing the Court."

All these questions, it will be seen, depended upon the interpretation of written documents, agreements made between the parties which neither party tried to repudiate, but which they interpreted differently. There was, however, another matter not unlike the fishing dispute which did not depend on agreements, but upon rules of international law involving dominion over the open sea. Russia's attempt at ownership of the Behring Sea had been protested against by both Britain and the United States; but shortly after the acquisition of this territory by the United States, legislation was passed at Washington which appeared to assert jurisdiction similar to that which had been claimed

by Russia. This had for its avowed object the preservation of the fur seals in Behring Sea. Even more definite claims of ownership of this sea were soon made by the United States. Canadian vessels repudiated the authority of the United States and continued sealing in that part of the sea in which they had been accustomed. Some ships were seized, some Canadians imprisoned, some turned adrift in California. When we remember that the seizures were sixty miles from land, the serious nature of the claim to territorial sovereignty is apparent. This state of affairs was intolerable: Canadians would seal, American cruisers would capture their ships and men. Uncle Sam might, if he would, become a nursing father to the seals: but Canadians determined that it was only his own seals he was to control and kept on killing those which swam at large in the sea.

The dispute was a dangerous one, and at any time a rash American Captain might plunge his Government into serious difficulties, or even war itself. Civic Britannicus sum is a living maxim and Britain would not allow her sons to be slaughtered. At length in 1892 the matter was left to a board of two Americans, one Englishman, one Canadian and one from each of the countries France, Italy and Norway. Their award was made in Paris in 1893 and proved generally satisfactory. The amount of damages to be paid Canadians, etc., was fixed by two judges, one an American, the other a Canadian; no umpire was necessary, and the amount, nearly half a million, was paid without a murmur.

Before this, when the United States took property of British subjects south of the line 49° N. L. (when the line was agreed upon in 1846), a similar result was arrived at. Some British subjects had peacably settled in the territory south of this line; and for land and improvements of which they were deprived, they asked to be paid. The United States cheerfully agreed to pay, and to determine the amount two Commissioners were appointed. These were such unpatriotic men that they (in 1869), agreed upon the amount without even troubling the umpire, Benjamin R. Curtis. My friend and judicial brother, now Mr. Justice Maclaren, of the Appellate Division of the Supreme Court of Ontario, was secretary to the British Commissioner, Sir John Rose, and speaks highly of the judicial attitude of both representatives.

Mere money claims have sometimes rested on positive agreement, sometimes on the rules of international law.

A very curious dispute arose over one of the terms of the Treaty of Ghent. By Article I it was agreed that all territory taken should be restored, without carrying away of slaves or other private property. Many slaves had come within the British lines, attracted by a proclamation which virtually promised them freedom. (It may be remarked en passant that it was this conduct of the British commanders which came in for the bitterest comment by Americans, especially those of the south.) These quondam slaves had accompanied or preceded the British forces in their abandonment of American soil, and it was demanded that they should be returned or paid for. The British claim was a perfect example of legal hair-splitting, worthy of a special pleader; but it was in favorem libertatis, and a plea of that kind, like a plea in favorem vitæ, has always been looked upon with favour in English-speaking courts. There was never any thought of delivering up the poor blacks, but the question of obligation to pay for them was an open one. It was finally left to the Czar of Russia, and he determined in favor of the contention of the United States.

Partly by arbitration of four commissioners, and partly by diplomacy, the amount was fixed at about a million and a quarter dollars. That sum Britain paid and kept the

negro.

I have always been proud of this chapter of history—we in this Province which is the first in all English-speaking countries (and in the whole world behind only one country and that by but a few months), to abolish slavery, ought to be able to appreciate the conduct of the mother country in paying such a sum rather than send unfortunates who had trusted her, back to the land of the free and the home of the brave, knowing that for them to be brave was to incur torment and death itself, and that only death could make them free.

Long before this, the Treaty of 1783 had stipulated that creditors on either side should meet no lawful impediment to the recovery of the full value in sterling money of all bona fide debts theretofore contracted. Some of the States refused to implement this agreement, and British creditors were deprived of their honest claims. The United States could not coerce the States, but they did not repudiate the clause in the treaty—did not say, "We thought we could have this agreement carried out, but we cannot, accordingly we do not consider ourselves bound."

What was said was, "We cannot compel the States to do the honest thing and the thing agreed by us, but we will

pay out of our own funds." And they did.

So, too, Britain did not say, "Necessity knows no law, we had to seize your ships to save our nation, and we will not pay." What was said was, "What we did we did in our bitter need, but we had no right to do it, and we will pay

the damages."

Britain indeed absolutely refused the demand of Washington that she should pay for some 3,000 negro slaves taken away. "These," she said, "ceased to be slaves when they reached the British lines, and neither by God's law, international law nor agreement are we bound to pay for them." And she did not. Nor did the United States

go to war to try to compel her to do so.

Then came the fraticidal war of 1812-14. This is not the time or the place to consider how far it was justifiable or reasonably necessary. Dignified in advance as the Second War of Independence, in its inception it nearly clove the Union in two and it ended inconsequent, leaving nothing decided for which it had ostensibly been begun and carried on. It left behind it a legacy of hate not yet wholly spent, in this Province it put back for more than a quarter of a century her progress, and if it did good to anybody other than a few contractors and government employees, I have not been able to discover an instance.

Inconsequent as it was, the sound judgment of both peoples insisted on it coming to an end and peace began, never,

please God, to end.

After the Treaty of Ghent many claims were made by American citizens against Britain for illegal seizures of ships, etc., and by British subjects against the United States for the same causes of complaints, for arrest of British subjects, and the like. These were in 1853 referred to a board of three commissioners. Britain chose Edmund Hornby, a lawyer of standing, who was afterwards Judge of British Courts in Constantinople and Hong Kong; the United States, Nathaniel G. Upham, for some years a Judge of the Supreme Court of New Hampshire. These two tried to induce Martin Van Buren, ex-President of the United States, to act as umpire, but he declined; and then they chose Joshua Bates, a member of the London banking firm of Baring Bros. & Co., but an American by birth, education and allegiance. As matters turned out, each nation got an award about equal to that of the other.

Another and a very serious dispute arose later, which could not be determined by any pre-existing agreement, or even by the rules of international law: there was no such agreement, and the parties did not agree as to the law. A claim was made by the United States for damage due directly, and for still more damage due indirectly, by Britain's conduct during the Civil War in allowing Confederate cruisers to be fitted up in her waters and escape to destroy American shipping. A most unpleasant and dangerous controversy arose, inflamed beyond a doubt by the anger in the United States against the old land for the conduct of her governing classes during the crucial struggle for human liberty. War was in the air more than once; but both parties wished for what was right; neither thought it would be better to obtain what was right by means of war; and it ended by the two peoples (in 1871), agreeing between themselves upon the principles which they should adopt as the law governing the case and leaving the determination of the amount to a tribunal of five—an English Chief Justice, an American publicist, an Italian judge, a Swiss advocate and a Brazilian professor of law constituted the Bench; and their award, dissented from it as it was by the British representative, was paid without demur.

By the same treaty (that of Washington, 1871), a Board was formed of three—an English and an American judge, with an Italian diplomat—to pass upon certain claims arising from what was considered the unneutral conduct of Canada, also upon certain claims by British subjects for improper seizure and detention of ships, illegal arrests, destruction of property, etc., by the United States. None of

the American claims was held valid.

How do we stand at present? In the first place, we have made it impossible to have immediate naval warfare on our lakes. As far back as 1817 it was agreed that there should be no ships of war upon the international waters. Then the United States and Canada have an agreement dating back to 1909 whereby a permanent Board is formed, composed of six members, three appointed by the United States, three by Canada. This Commission has jurisdiction over all cases involving the use, obstruction or diversion of the international waters; but also all matters of difference between the countries involving the rights, obligations or interests of either in relation to the other, or the inhabitants of the other, along the frontier are to be referred to this

commission for enquiry and report. Moreover, any matter or question of difference involving the rights, obligations or interests of the United States or Canada, either in relation to each other or to their respective inhabitants, may be referred to it for decision. This commission I have more than once called "a miniature Hague Tribunal of our own, just for us English-speaking nations of the continent of North America."

I need not speak of the general treaty of 1908 or of the recent treaty which is meant to delay military operations and to give the nations a chance to consider their dispute

in all its bearings.

It is plain—he who runs may read—that we have been so satisfied with the Century of Peace that we are making every effort for its continuance ad multos annos. In every way peace has paid. Let no one persuade himself that the war of one hundred years ago did anything to teach the peoples respect for each other or to bring them into harmony. Whatever may have been its effect, if any, in welding the Union together, internationally it was wholly evil, and its evil effects still continue. It was the peace, the ways of peace, which brought us together and made us almost one. What American but finds himself at home in my Canada, what Canadian considers himself a foreigner or an alien in the United States?

What of the future ?

I read that Maxim, the great inventor, says that after the present war the United States must fight the victor. I confess scepticism about the United States being forced to go to war with any people. I have heard many times of its being obliged to fight Britain; not many years ago, war with Germany was inevitable (over some nitrates, I think, and later in the interests of Standard Oil): Mexico has been its predestined victim dozens of times; and when no other antagonist is above the horizon, Japan invariably appears.

But Maxim may be right. He is undoubtedly right if that victor, be it which nation it may, hold as a cardinal doctrine that war is good in itself, that war is necessary for the highest development of a nation, or the like accursed creed. Any nation which believes—and does not simply say that it believes—that "the living God will see to it that war shall always recur as a terrible medicine for mankind," will not fail itself to play

the physician and administer the prescription if the

Almighty seem not sufficiently attentive to His duty.

And if the victor live the doctrine, Might makes right, the time will surely come when Right will be made by Might; while in the meantime that republic, to which countless thousands have fled for the chance to breathe without the load of military conscription and tax, must in the meantime be ever prepared, paying for that preparation the inevitable price in money, anxiety and the brain and brawn of her sons—those sons, who will thus learn, as no otherwise could they learn, what is meant by the principle, "The citizen exists for the State, not the State for the citizen." If the victor be a nation which loves peace, which will seek peace and insure it, which acknowledges that there are other and higher rights than such as may be given by the will of the stronger, that the moral law is of validity in conduct towards other nations, that the pledged word must be kept, a nation that walketh uprightly and worketh righteousness and speaketh truth in its heart, sweareth to its own hurt and changeth not, then we need fear no war-sum of all the villianies—for when war begins, then hell openeth.

In New Orleans the other day I heard a distinguished officer of the American army urge that children should be taught to fight for their rights, for, said he, "if we do not fight for our rights, we soon shall have no rights to fight for." I ventured then, as I venture now, to say, God forbid that the time should ever come when those of our breed should need to be taught to fight for their rights. But there never was a time when any people of our kind has required to be urged to fight for its rights; we always have been, are now and always will be, all too ready to fight for our rights. That is not the true difficulty or the matter of greatest importance—what is important is to determine what our rights

are.

No nation, as no individual, ever existed that can be wholly trusted to determine its own rights; impartiality is excluded in the nature of things; and it is the pugnacious spirit, the spirit which is insistent to fight for rights, which is the greatest danger in our international relations. Any nation that is looking for a fight can always be accommodated. It was the curbing of that desire "to fight for our rights," and the careful determination on principle of what these rights were, which made possible the century of Peace.

Fight for our rights? Undoubtedly—and fight for the rights of others as well, a persecuted France, a tortured Belgium. Please God, the day will never come when we shall be unwilling to spend our last cent, to sacrifice our last man in the cause of human freedom and the cause of righteousness. But in respect of our relations with the people to the south of us, we have never for a hundred years, had occasion to threaten an appeal to arms on either side—the difficulty has always been, how best can be discovered what the respective rights are. In this, as in all else, there has been an occasional mistake, the too belligerent message at the time of the seizure of the Trent; the "shirtsleeves" dispatch of President Cleveland at the time of the Venezuela troubles. The former was softened at the instance of the Prince Consort, the latter was rather laughed at as the production of a person unacquainted with the usages of good society, and not accustomed to the niceties of diplomatic intercourse. But in the main, each nation has been confident of the sense of justice of the other: each has believed that not only itself, but also the other was wholly convinced that while Might is great, Right is greater, and it is not valour or prowess in arms but righteousness which exalteth a nation. And without fear of successful contradiction I say, that between us, on the whole, and speaking generally, despite a hundred stumbles and falls, there has been fidelity to the pledged word and the dictates of the moral law.

Some of us had hoped that the example of these two peoples would have taught the nations that war is unnecessary. That was not to be. The present terrible conflict may be the last; but if this hope prove in vain, we should not despair; the cause of peace must advance, though, as with the rising tide, there will be receding waves.

Whatever be the fate of others, as to these two peoples I hope and believe that as between themselves they have finally and irrevocably decided there shall be eternal peace;

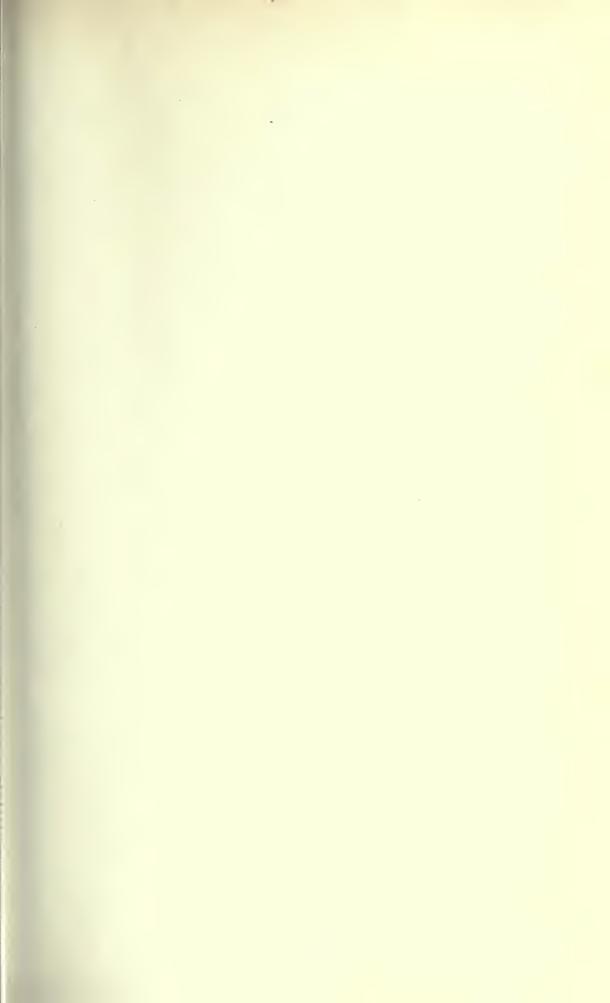
the peace already well begun shall continue forever.

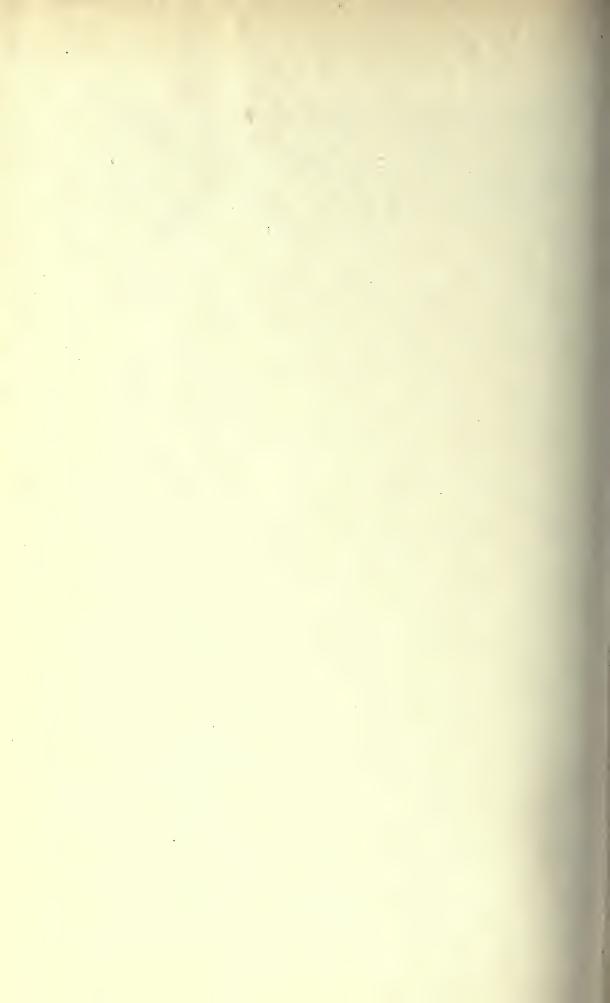
For, if, as we believe, there is a moral Governor of the universe, governing by a moral law; if these peoples have that sense of law which equally with the starry heavens filled the German philosopher with awe—and that is my faith—it is as certain as to-morrow's tide that the English-speaking nations on this Continent, over the Sea and around

the Seven Seas, must in the future as in the past, be firm in the determination that nothing shall break the bond of

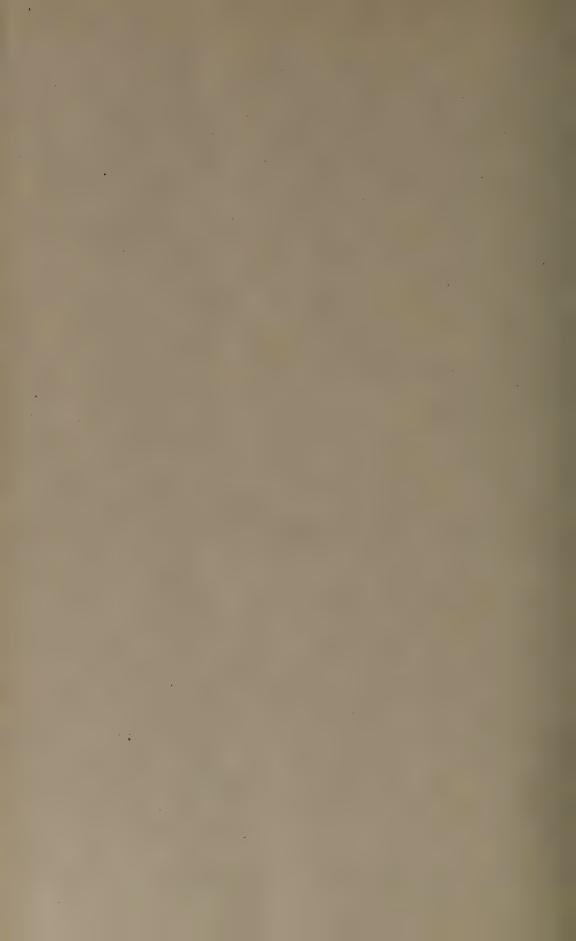
amity and good will which binds them together.

Let us as Canadians as well as loyal Britons, see to it that we are not remiss in any and every effort which will tend to make that union strong and lasting—Canadian Clubs can have no higher or better aim.









THE PRUSSIAN MIND

AN ADDRESS BY

THE HONOURABLE WILLIAM RENWICK RIDDELL, LL.D., Etc.

Before the Empire Club of Canada, Toronto, March 15th, 1917.

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Mr. President and Gentlemen.—Not long after the beginning of the war I asked a German (now deceased) in the United States with whom I had long been acquainted—I thought I knew him, but this proved to be a mistake to let me know the best and most approved works by his countrymen concerning the causes of the war. He gave me the names of several; I procured them all and read them with care more than once.

The self-exhibition of the Prussian mind made in these books is so striking that it seemed to me that a Canadian audience might welcome some account of it. Accordingly when I was asked to address this Club, I determined to say something to you based upon the reading recommended by my German acquaintance.

Let me begin by saving that, by profession a Judge, I have tried to enter into the mind of the Prussian intelligently—I have (at least, as an intellectual exercise) endeavoured to "think Germanically." The result has been in my case as it was in the case of many others, neutral and belligerent: as I have in substance said

elsewhere:

"I find it impossible even to follow the reasoning of some of these apologies. To show that I am not singular in this incapacity, let me quote what has been recently said of and by Charles Francis Adams, an American of the Americans, a real statesman and a scholar of the highest type. In the New York Evening Post I find the following (written immediately after his death): 'He was intensely alive to all that was going on in the world. Needless to say, the European war set all his fibres tingling. His general position of hostility to the Germans was made known in letters to the English press. They were naturally more restrained than his personal talk and correspondence. From a private letter written by him no longer ago than March 13, the following characteristic passage may be taken; it was Mr. Adams' comment upon the assertion that Americans do not understand Germany be-

cause they "cannot think like Germans":

"Suspecting this in my own case, I have of late confined my reading on this topic almost exclusively to German sources. I have been taking a course in Nietzsche and Treitschke, as also in the German Denkschrift, illumined by excerpts from the German papers in this country and the official utterances of Chancellor von Bethmann-Hollweg. The result has been most disastrous. It has utterly destroyed my capacity for judicial consideration. I can only say that if what I find in those sources is the capacity to think Germanically, I would rather cease thinking at all. It is the absolute negation of everything which has in the past tended to the elevation of mankind, and the installation in place thereof of a system of thorough dishonesty, emphasized by brutal stupidity. There is a low cunning about it, too, which is to me in the last degree repulsive."'"

The book which I especially select for examination now is by a Dr. Magnus Hirschfeld of Berlin, and is entitled "Warum hassen uns die Voelker?"—"Why are we hated by other Nations?" The whole work is based upon the theory that the cause of the war was the hatred for the German people felt by others in Europe, and the plaintive enquiry is made: "Whence comes the hate of the foreigner against the German people? Why are we hated notwithstanding that we are the attacked, notwithstanding that Right, Justice *

^{*}The word which I translate "Justice" is "Maessigung," literally "Moderation." It is the quality of the mind, the disposition, which prevents one from pressing even his rights to an extreme, that of a calm and temperate soul, willing to give up its own rather than seem to be unfair. All the world will at once recognize a prominent, indeed the prominent, Prussian characteristic.

and Humanity* stand on our side?" "When in August of the present year one country after another threatened us with war, many German men and particularly German women were not a little astounded at the fearful hatred of Germany which unfolded itself before their eyes. Such a height of enmity, they had not expected against a people who they knew loved peace and work, abhorred cruelty and barbarity † and was conscious of no hatred towards other peoples."

That is the story—gentle, meek, humane, innocent Germany, desiring only to be left in peace at her honest toil, but hated without her fault by other nations—and that when nearly half a million subjects of the Empire were abroad at the beginning of the war. Why, actually the Press of Russia, England and Belgium brand that lovable people as Huns! What

can be the reason?

The absurd theory is rightly rejected, that an explanation is to be found in the fact that the clothes of the Germans are displeasing to others, and the equally absurd ones that their too positive and impudent ‡ manners, their way of praising and blaming, their manner of wearing the mustache, a certain want of good form, of lovableness grating on the foreigner, are similarly rejected by the author. He rightly says that, granting all these defects, they might excite criticism and derision, but could never be a sufficient cause for national hatred and open war.

The Foreign Press has for a long time been sowing the poisonous seed of which the nations now are reaping the harvest; the papers with the largest circulation are the most prominent in this shameful work. Le Matin and Le Figaro in Paris, The Daily Mail and

†"Greuel und Grausamkeit;" "deeds of horror and savage cruelty." Belgium does not require an explanation of the kind

^{* &}quot;Humanity" is "Menschlichkeit"—human feeling, so notably displayed in Belgium.

of deeds Germany said she abhorred.

‡ "Schneidig" means pert, self-confident, assertive, commercial-traveller-assurance-and-push-like; the possessor looks upon his quality as a virtue, most others look upon it—and him—as a nuisance.

The Times in London, the Novoie Vremya in St. Petersburg, the Messagero in Rome, and the yellow press in North and South America sound the same note. Without deciding that most of these journals are in the pay of Anglo-French capitalists, as some maintain, the fact is that with very few exceptions every one in the world has for decades received his news from the Thames and the Seine; and consequently he looks upon Germany not with his own eyes, but with the eyes of the English and the French.

The first important psychological basis for this extended hatred of Germany, is this artificial suggestion: it is no natural national sentiment, but an artificially fanned and nurtured hatred whose ravaging

flames now burst out against the Germans.*

This suggestion produced a veritable national insanity in the outside world—a psychical epidemic like the superstitious belief in witchcraft which prevailed in Europe till the middle of the 18th century and to which millions of men fell victims. For "to-day, thanks to suggestion and psychical infection, millions of persons have fallen prey to insanity, a benevolent people is become malevolent; the most orderly, the most licentious; Germans, 'Vandals,' 'wild Hordes,' 'ravening beasts,' or, as an American newspaper sees fit to call them, 'the Apaches of the Nations.' "The author is righteously indignant at such calumnies and brings to mind the truth which Bismarck never in fact forgot, whatever he might say about talk not being companies or words battalions, namely, that a mighty force dwells in lead pencils as well as in lead bullets.

As in physical epidemics, the plague, cholera, etc., one can always trace the infection to some "carrier" or other, so in psychical epidemics there are a very few—often indeed only one—who are the carriers of the infection. But there is more than the "carrier"; there is the producer of infection, the very germ of the evil.

^{*} The author conjures up from his own consciousness a perpetual and world-wide "Hymn of Hate," which no one outside of Germany had ever heard of and no one outside of Germany can even now discover.

And of the horrible spiritual epidemic of hatred against Germany, the principal germs are three-Suspicion, Jealousy, Misconception.* That the German people were not justly an object for suspicion the writer thinks obvious; they were entirely misconceived, and jealousy did its deadly work.

Dr. Hirschfeld now finds it necessary, in discussing "carriers," to distinguish three periods—before the war, at the outbreak of the war, and during the war.

Before the war the carrier was that encircling statesman t on the English throne who employed his short reign in voking to his chariot one European and non-European nation after another, giving them the hypnotic suggestion that they were threatened by some evil by Germany—the fatherland of his own father, be it said incidentally. "And if now war is declared against us by people like the Russians and Japanese, who have never received anything but good from us, if from the most remote lands savage and semi-savage hordes have been summoned against us, peoples to whom even the name of Germany was as little known as the names of the Sikhs, Gurkas and Spahis were to most of our soldiers, we have to thank for it Edward VII., who, in union with Joseph Chamberlain, made the noose which at the proper time would be drawn and would strangle us." ‡ But even in England there

and carrying into operation an iron ring round Germany.

Every Canadian, every Briton, every lover of democracy and civilization, may well say as I do—"Thank God for King Edward

VII."

^{*&}quot;Misstrauen heisst der eine, Missgunst der andere, Missverstand der dritte." "Misstrauen" is distrust, suspicion, etc. "Missgunst" may be disfavour, envy, jealousy, ill-will, etc. "Missverstand" is misunderstanding, misconception, mistake, etc.
†"Einkreisungspolitiker," referring to the common German notion that King Edward VII. employed his whole time in planning

I have heard a Canadian, a citizen of Toronto, a gentleman with His Majesty's Commission of Colonel, say that he blamed King Edward for this war. I told him that I quite agreed with him; that this war would not have been waged but for King Edward; that the war we should have seen would have been a war with Britain and France disunited as in 1870, in which France would have been overwhelmed and destroyed, Belgium annexed, and then Britain's turn would come to fight single-handed.

was a saving remnant, for, after the decision had been made, "the fourth part of the Ministry, amongst them two of the most prominent, John Morley and John Burns, resigned that they might not be partakers in the blood-guilt of this insane war." *

So much for before the war and at the time of its

outbreak.

During the war England has exhibited the most remarkable national psychology. "Rightly are we angry at the web of lies which England has, through her Press, spread over the whole world. We can easily see that this, from her standpoint, is simply the systematic use of a weapon of war, a stratagem, as it were. She knows quite well that we never can and never will equal her in the use of this Dumdum artillery—for many of these falsehoods operate like Dumdum bullets—the uprightness and rectitude † of the German character does not permit it." Listen to that, ye crooked and lying Britons! Germans cannot lie and they would not plot in a neutral country—what liars the Americans are!

"The clearest example of what artificially induced fear will bring about, is afforded us by Belgium. That unwise conduct of Belgium at the outbreak of the war—those fanatical charges of Belgians against German settlers—that firing by civilians upon German troops from the rear—the wild flight of nine-tenths of its inhabitants out of Antwerp shortly before the Germans entered that city—all these can find an explanation only in the fact that to the ill-educated Belgians, the

^{*}I doubt if these two ex-Ministers are now proud of their action. Lord Morley's blood even in his aged veins must have been a thousand times moved by the heroism of his countrymen and the Hunnish horrors of the enemy, and he can now have no doubt of the propriety and necessity of the action of his fellow-ministers in declaring war. John Burns bitterly repented almost immediately, but he had made a fatal mistake and he was denied the honour of acting in a war cabinet. To his credit, however, be it said, that he threw himself into such work as he could do, and has nobly redeemed his temporary hesitation.

^{† &}quot;Geradheit und Aufrichtigkeit." "Geradheit" is literally "straightness," "Aufrichtigkeit," "uprightness."

German was painted in such a way as to fill their hearts with panic, terror and blind fear of death."

This requires no commentary. The world knows how that terror was justified to the full and horrors added which it had not entered into the heart of man to conceive. Shrecklichkeit intended to appal and terrorize the world, has but raised all humanity against its inventors and sole licensees. Germany can never raise her head again amongst the civilized nations till she has sincerely repented and put away the unclean

thing from her treasures.

After gibing England for her silly fear of Zeppelins, the author gives another instance of induced insanity: "A long time before the war one read in a seriously meant and seriously named book, 'The Spies of the Kaiser,' that the 30,000 waiters in English hotels formed an army of spies"; and this spyphobia resulted in many domiciled Germans being sent to concentration camps. The upright German is, of course, above spying in England, whatever he may be in the United States.*

In the perpetual recurrence to the villainies of England, the Doctor does not lose sight of France, "who hates us from the heart because the wounds still rankle which we inflicted on her in 1870-71."

But these wounds were healing and France was reconciling herself to the inevitable when England came

and "bored deep the thorn into the old scar."

"And Russia? Why do the Russian people hate us, that is, if they do really hate us?" (for the gentle and kindly Berliner cannot bring himself to believe that the Russians can really hate the innocent Germans). "Because the ukase of the Czar commands it." But "why does the Czar hate us? Because his entourage have suggested to him that it is his fate which he cannot escape to have a struggle for the mastery with Austria and Germany." That entour-

^{*} A few days ago a Senator of the United States who is usually understood to speak for the Department of Justice, said there were more than a hundred thousand German spies in that country; and "if they do these things in a green tree what shall be done in a dry?"

age, composed of mystics like Rasputin, unscrupulous (a lovely touch this!) Archdukes, creatures in the pay of England, persons jealous of the descendants of immigrant Germans.

"Nothing in national life is so dangerous as the fatalistic thought that an explosion must come, if not to-day, then to-morrow—for many will think better to-day than to-morrow, and end the unrest and sus-

pense....then the explosive spark."

Having thus disposed of Russia, the author asks himself on honour and conscience, "Did Germany before the war hate England, France and Russia?" And the answer comes clear and unhesitating: "The overwhelming majority of the German people from Kaiser down treasured for England the most kindly * sentiments, for France feelings of sympathy, for the Russian people pity....with open arms we received English, French, Russian and Japanese like all other peoples....of bitterness, enmity, hatred of the for-eigner, envy, not a trace."

But the writer cannot keep away from England a veritable "King Charles' head" to him, as to all his countrymen. He tells us that, as she had conquered Spain with the aid of Holland in the 16th century, Holland with the aid of France in the 17th, France with the aid of Germany in the 18th and 19th, now it was the turn of Germany. "Envy, nothing else, is the root of this war; all else is deception, conscious or unconscious. When we, through sheer necessity, must needs march through Belgium, after we had assured her (along with Luxembourg) an indemnity, England considered that she had to declare war against us; that after she had on the principle 'Might goes before Right' subdued to her own rule one fourth of the population of the earth, she played the part of Custos morum t and guardian of virtue..." But

* "Verwandtschaftliche,"-"Such as are felt by sympathetic

kinsfolk for each other."

† "Sittenrichter,"—"Censor or judge of morality." One can

the Brandenburger at the very almost see the tear in the eye of the Brandenburger at the very thought of "Macht geht vor Recht" being used as a principle of international conduct.

one must be very credulous, indeed, to see in that the real cause of the war. "No! the deeper one delves into the psychology of nations, the more clearly one sees that we are hated, not for our weaknesses, but for our strength; far more do their virtues than their faults make the Germans disliked—not what there is in us to blame, but what there is in us to praise—our achievements and our success were a thorn in the eye of our adversaries. Because Germany has become too great, England would make her small, and that is why now she puts other people, France and Russia, forward to fight for her, after her ancient fashion; that is why Germany now sees the flower of her youth bleed in battle."*

Having satisfied himself of the actual cause of the war, the writer proceeds to investigate the objective foundation for this hideous envy in England's heart—

the fons et origo mali.

He finds it in Germany's foreign trade, which twenty-five years ago was but half that of England and little more than that of France, but in 1914 was 85 per cent. of the English and more than 150 per cent. of the French. England nevertheless should not have complained, for while the German trade increased three-fold, the English doubled itself; and surely competition should not lead to a struggle for existence. The author then indulges in a long and boastful description of Germany's material progress and wealth, of the increase in population—"in the neighbouring country (France) the number of coffins, even in years of peace, overtakes the number of cradles" (that is irresistible) while on the contrary in Germany the births are more in number than the deaths by 800,000.

But particularly irritating was it to England that Germany began to contest her superiority on the water. Shortly after 1900, Germany wrested from England the blue ribbon for the swiftest Atlantic liner, and then she produced the floating palaces *Imperator* and

^{*} The writer indulges here in a pun, "Darum blutet jetzt Deutschlandes Blüte." "The flower (bloom) of Germany now bleeds."

Vaterland. If Albion went crazy when the merchant steamers cut into her trade, what tongue can describe her frenzy when the great war fleet made its appearance?

Then follows what is to me the most amusing passage in this amusing book; amusing for its naiveté, its utter innocence and incapacity to understand from any point of view other than the German. I translate almost literally and almost in full: "Upon still other fields the rivalry of Germany made itself felt by the English. A generation ago, the 'globe trotter' was known, of almost exclusively English growth; it was almost comical to see how for several decades now the travelling Englishman got out of the way of the Germans following him, and they did, in fact, follow him. When the Germans began to travel in Switzerland, the English set up their tents in the Riviera; when this became the resort for Germans, the English turned themselves to South Italy. It was not long before the Germans appeared on the scene here also; and then the 'ladies and gentlemen' struck for Northern Africa, especially Egypt, with ball and racket. But hardly had a few years passed before the German cousin bobbed up at the edge of the desert and the shores of the Nile; and now the travel was to Ceylon, India and Japan, till at length the Englishman had to confess with a sigh of resignation that nowhere on the earth was it possible for him to escape his fate in the shape of a German."

This is perfectly serious. The German has not the slightest idea that his presence is or can be offensive to "ladies and gentlemen" for reasons which are known to every one who has travelled with them or amongst them, and has seen and heard them dine—or feed. He sagely concludes: "If they (i.e., the English) had more to find fault with in externals, they would have less

internal chagrin."

He passes to other grounds of the foreigner's envy—science, civil order, Krupps, Zeppelin, the "Dr. Ingenieur"—and shows that order and freedom are the cardinal principles underlying the German system, and "he who loves order, loves peace also." "It was precisely that open, honourable, often somewhat raw and

harsh speech and demeanour of the Germans which helped to make them disliked, especially by the elegant French and the English, behind whose reserved composure and full-dress smoking-jacket, there hides more repression than in our apparent excess of regulation."* The frank and open candour of the German is so well known that we had no need of this eulogium. That he was often rude, raw, coarse, is intended to emphasize his blunt honesty, vice John Bull retired to stiff shirts and smoking-jackets.

The openness of the German, his rigid adherence to the truth under all circumstances, is further brought out by the sententious "He who lies, is not free:" and

there we may all agree with the author.

Then follow a long and flowery eulogium of the freedom of spirit and conscience in Germany, and a proper rebuke of the nations which sent Oscar Wilde to the treadmill. "There can be no dispute that English cant and dissimulation and German candour and thoroughness exhibit a difference of national sentiment hard to bridge over"—which leads one to say that it is an infinite pity that Oscar Wilde was sent to the treadmill rather than to Germany, for in that land he would have had an opportunity to exercise his "Offenheit und Grundlichkeit."

A long dissertation over the ignorance concerning Germany and the German people follows:—the "misunderstanding" with which we began †—the author passionately cries: "The German Empire, which our enemies believe they are fighting and the German Empire which they are really fighting are two fundamentally different things. Their hostility is against a nation of savages which does not in fact exist; against a product of the imagination, against a phantom; and

^{*} One would almost think he could detect some trace of envy here, were it not that we know that to the Prussian, Berlin contains all the virtues and all the graces.

[†] It is a constant wail by these people that others do not understand them. The fact is that all the world knows them too well. Ask Belgium, ask the victims of the Zeppelin, ask the murdered victims in the *Lusitania*, ask Edith Cavell.

for this phantom the flower of Germany and Austria will bleed and...also the flower of the French, English, Belgian and Russian nations in battles whose horror * it transcends the power of language to describe." Now, after more than two and a half years of war, we on the other side know that the "phantom" is a grim and bloody reality, for we have known the hellish horrors which it perpetrates not only in battle, but in the peaceful villages and country.

But, spite of all that her enemies may say, the truth remains—"Deutschland Kultureinheit," Germany a Kulturunit, a land of Kultur, one and indivisible—and there all may agree. The book ends with the words of Schiller:

"What is there pure, holy, good in man, If it be not fighting for our Fatherland?" †

Let no one imagine that this is intentional misrepresentation or simply pose. The Prussian is the product of more than forty years of sedulous training in the belief that he is the superman, his race the superrace, that what he desires is right because he desires it. His conduct is everything which is right and laudable because it is his conduct. He will give the name of old-fashioned virtues to his new-fangled vices; and yet we must not say "new-fangled vices," they are as old as the bottomless pit of which they smell. His grotesque insistence on his nation being the chosen of God, naturally (with his swelled head) leads him to agree with his Kaiser that God is an ally, a junior partner in the firm.

I would quote here a passage from an English work

recently published: I

"We need be under no delusion as to the popularity of the Kaiser among his subjects. He is worshipped

^{*&}quot;Hoellenschrecken,"—"hell-horrors," the superlative form of "Schrecklichkeit."

^{†&}quot;Was ist unschuldig, heilig, menschlich gut, Wenn es der Kampf nicht ist ums Vaterland?"

^{‡&}quot;The mark of the Beast," by Sir Theodore Cook (London: John Murray), a book written since the beginning of the war.

by them all, for he is their supreme ideal, the superman of the whole super-race of seventy million Germans. He preached 'shining armour' and 'mailed fists,' and his people firmly believed every word. 'Madman?' Not much. He gave Germany a development in trade and wealth which was bigger than their wildest dreams. He drove up her birth rate. He typified their glorification of material force. He is, perhaps, the only living sovereign who could have deliberately signed the atrocious lie about the Dumdum bullets which he cabled to the President of the United States, and yet preserved the approval of his people. He announced himself as God's vice-gerent on earth and Germany as God's chosen nation. Germany was delighted. She thoroughly agreed. She believed in him right through, and she believes in him still, and she is practising with all her might the gospel he preached and made possible. For the ruthless militarism of Frederick the Great was developed to its highest point by his descendant."

In this Kaiser-worship, as in many other respects, the Germans are in much the same stage of development as the English centuries ago, when the king was

almost deified.*

Not unlike the English of Elizabeth's time are the Germans in their lust for material advancement at the expense of other peoples, and they far overtop any generation of Englishmen in their inordinate self-esteem.

Another striking characteristic of the German mind is its childishness. Be it remembered that childishness and utter cruelty are quite reconcilable. The German cannot rid himself of the idea that saying a thing often

^{*} I hope I do not offend the susceptibilities of anyone when I refer to the eulogies of King James I. by the translators of the Authorized Version—in any other connection, one would be nauseated by the fulsome flattery of the "most dread sovereign,"—like the "Sun in his strength" whose coming "to rule and reign over us" was the cause of "great and manifold blessings." The conventionalities of official life are still preserved in form, but while we say King George is King "by the Grace of God," we know and he knows that he is King by grace of an Act of Parliament.

enough will make it true; hence the iteration and reiteration of phrases like "the freedom of the sea." Perhaps the height of childishness was reached when a week or two ago a leading statesman in Germany said: "We gave up our marine trade at the beginning of the war, let Britain now do the same and fight with us on equal terms." The cry of brutality against Britain for her blockading policy is repeated again and again. German brutality is justified (not simply excused) by the exigencies of war; Britain's acts, wholly justified as they are by the rules of international law, are characterized as brutal, and sentimental German tears flow from unnumbered eyes at the degeneracy of the English cousins.*

The flat-faced, square-headed Prussian is akin to the Kalmuck,

the Mongolian, not to English, Irish, Scotch or Welsh.

I should like to add here Bernstorff's view of the Lusitania

tragedy:

"War between Germany and America over the sinking of the Lusitania was avoided, at one stage of the negotiations, by a personal appeal made "as man to man" to President Wilson by Count von Bernstorff, then German Ambassador, who begged the President not to insist that Germany admit that the sinking of the Lusitania was illegal and thereby throw away his opportunity of becoming the intermediary for peace proposals. This is given as Bernstorff's own statement in an article on the personality and career of the late Ambassador by Frank Harris, editor of Pearson's Magazine, and former editor of the Fortnightly Review and the Saturday Review of London. The article is to be published in the April, 1917, issue of Pearson's.

This version of the way war was averted was told to Mr. Harris personally, he says, by the German Ambassador.

Mark the insistence on the word "illegal" as though the horror

could be diminished by the omission of the word.

"Bernstorff himself," says Mr. Harris, "did not approve of the morality of the sinking of the *Lusitania*, even on the theory that it was retaliation for the illegality of the British blockade.

"'You should not meet illegality by lowering your own ethical standard,' he argued, 'otherwise the antagonists would go down by successive steps to brute atrocities. You have to protest against illegalities and keep the law yourself the more rigidly. I had no difficulty in promising that the *Lusitania* incident would not be repeated though it would be wrong to speak of it as 'illegal', for ships carrying contraband are fair prey now as they always have been.

^{*}It is noticeable that the German when he claims a cousin across the North Sea, always calls him English. He has not yet claimed kindred with the Scot, the Irishman, the Welshman or the Canadian. Even for such small mercies may we be truly thankful!

Just now is the cry, Peace, Peace, when there is no Peace; there can be no Peace. The German may "bless himself in his heart, saying, I shall have peace though I walk in the imagination of my heart," but "there is no Peace, saith the Lord, unto the wicked."

And yet there is mighty good in these modern Huns; their sense of order and willing obedience to authority, their burning patriotism, their unwearied diligence and minute accuracy all make for good, and we may hope that a great people will rise when they awake from the dream of superhumanity, when they acknowledge that other peoples have their virtues, when their eyes are opened to the hollow sham of their fetich, the Kaiser, with his megalomaniac patronizing of the Almighty, when they will shudder at the blasphemy of the "good old German God," when the awful horror of their deeds of infamy in Belgium is realized, when they have repented in sackcloth and ashes and have learned that it is not military prowess but righteousness which exalteth a nation.

But we Germans are not afraid that high standards will bring us to defeat. We are all, I repeat, moralists, believers in moral right, and perhaps, therefore, too careless of manners, too disdainful of courtesies."

And he adds in a burst of generosity:
"'I have no hates in me,' he said to me once; 'the worst of
me is I cannot hate. I cannot hate even Grey. I know you are right,
I'm sure he is a man of high character and intense patriotism. It is a
pity he goes in blinkers and cannot see us Germans as we are.'"

The real trouble, of course, is that Grey knows "us Germans"

quite too well.

RECEPTION OF CARDINAL MERCIER AT CITY HALL

The Honourable Mr. Justice Riddell, who has been requested to speak on behalf of the citizens of Toronto, said:—

"I feel highly honoured in being asked to speak to, and for, the citizens of Toronto upon this great occasion, when our city is visited by the distinguished Cardinal.

"We respect His Eminence as a Prince of a great Church. Toronto is not a Roman Catholic city; nay, she has probably a smaller proportionate Roman Catholic population than any other of the large cities on the Continent; but, nevertheless, we recognize the dignity of the position of a Prince of that Church. Those of us who, like myself, are Protestant, do not admit her inerrancy. We cannot think that she is free from that liability to stray from the right which seems inevitable to fallible human nature; but we do feel and know that, on the whole, her influence has been, and is, for good.

"We know, too, that during long ages of mediaeval darkness, she kept alight the torch of learning, that she preserved the leaven of religion and righteousness when exposed to danger of destruction by the original Huns.

"And she was the home of democracy, her empire was the only one in which the ruler did not owe his throne to his father's position. While in every other principality, the Prince attained his place by taking the trouble to be born, the Church of Rome gave opportunity to all, for not alone the son of the noble and the wealthy, but the son of the lowly and the poor found the career open to the talents. The son of the farmer, the farm labourer, the hand not far, if at all, removed from serfdom, saw her door ever open-hers, the only open doorand she made it possible for the son, the cast-off and deserted son, of a poor Englishman to occupy the Chair of St. Peter-Pope Adrian IV. (Nicholas Brakespear).

admire our guest because he is a great scholar — no one can be a priest of his Church unless he is a scholar: The Cardinal has been a Professor in a Belgian University, a scholar and a thinker and teacher of more than merely national fame.

"We esteem the Cardinal because of his statesmanship: he has considered public office as a public trust and has not thought that a man in public station should misrepresent or falsify fact.

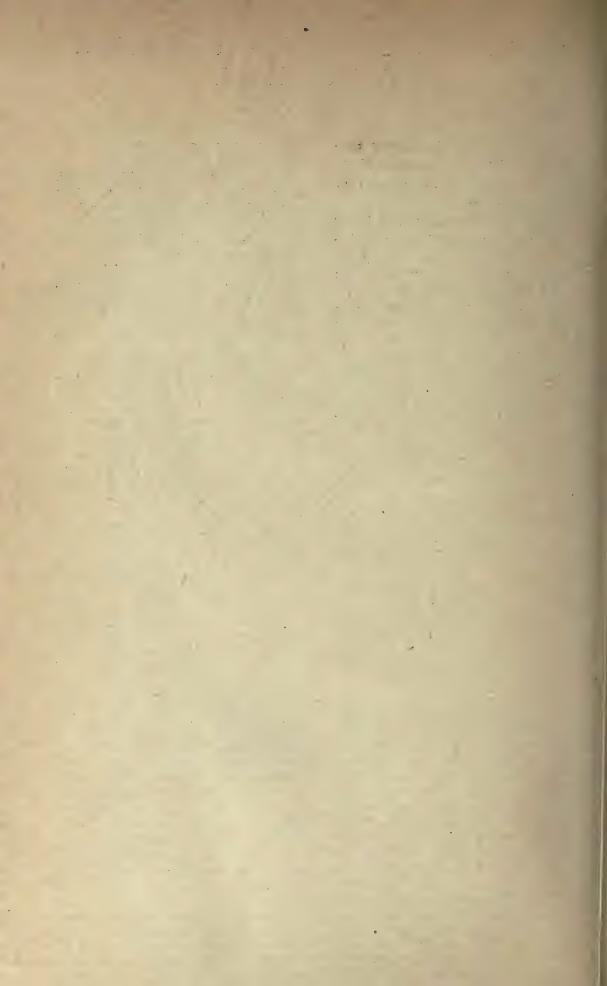
"Our warmest sympathy goes out to him as a patriot—during the terrible days of the German occupation, his patriotism never waned, his faith in the future of his country never failed, his determination to maintain moral resistance never wavered—he stood four-square against every attack, every threat and menace proved futile against that rock.

"But our respect for him as a Prince, our admiration for him as a scholar, our esteem for him as a statesman, our sympathy as a patriot, all yield to our love for him as a man.

"It was his qualities as a man, the humanity of him, which enabled him to withstand the tyrant, to flash the truth like lightning through the murky and sulphurious fog which the Germans endeavoured to east over Belgium—a fog which had its origin in the bottomless pit and a fitting means for use by those who were the true and willing pupils of hell. He opposed to the mailed fist the loving heart—to the malice and power of him of Potsdam, the morals and loving kindness of Him of Galilee.

"By precept and example, he inspired his people, and he it was that made Belgium he glory of the world.

To the great Churchman, great scholar, great statesman, great patriot and great and good man, we, the citizens of Toronto, without distinction of race or creed, offer our tribute of respect, admiration, extreme sympathy and love."





"The Canadian Forces"

An Address by the Honourable William Renwick Riddell, LL.D., Justice of the Supreme Court of Ontario, proposing the Toast—"The Canadian Forces," at a Banquet of Cyrene Preceptory, Po. 29, K.T., Toronto, Jeb. 7th, 1917.







William Renwick Riddell

"The Canadian Forces"

AN ADDRESS BY

THE HONOURABLE WILLIAM RENWICK RIDDELL, LL.D., JUSTICE OF THE SUPREME COURT OF ONTARIO

PROPOSING THE TOAST—"THE CANADIAN FORCES"

At a Banquet of Cyrene Preceptory, No. 29, K.T., Toronto, February 7th, 1917.

SIR KNIGHTS AND GENTLEMEN,—Not being a member of the Order of Knights Templar, I feel the more complimented at being asked to propose this toast. I am indeed somewhat at home in the Blue and not wholly a stranger in the Royal Arch amongst those who have found the Word; but my knowledge of Knight Templary is exoteric and only that which any one not admitted to your mysteries may have.

Something of the Knights Templars of history of course all know. Founded almost exactly eight hundred years ago, they went down in blood and torture after an illustrious career of two centuries. When Jacques de Molay on that little island in the Seine rendered up his heroic soul in the flames of martyrdom, summoning ruthless king and treacherous pope to meet him before the throne of God, the old order of Knights Templars passed away.

For two hundred years these devoted men had stood in the very forefront of battle for Christianity and civilization, and none too generous praise has been their meed from history. Without them, it might well have been that the Paynim would have conquered; but ever they stood steadfast, true to their vow "to fight with a pure mind for the supreme and true King." And we now enjoy the fruits of their labours and sacrifices.

I do not know, not being admitted into the arcana, whether the modern Order of Knights Templar has a valid claim to represent that of the olden time. I have met those with whom it is almost a matter of religion that the succession of Grand Masters is known from Jacques de Molay to Sir Sidney Smith, and that there never was a breach of continuity. Others again I have known who deride such a claim and express themselves well satisfied with their position as members of an acknowledged and legitimate degree of Freemasonry.

However it may seem to a Knight Templar, to me it is of little moment what the fact may be. Let the dead past bury its dead, and let us live in the living present. All may live in accord with the oath of the former Order, and fight with a pure mind for the supreme and true King. And when was it so necessary as at the present time, when the world is in travail and the last great fight is being fought?

What of our Empire? Is it not the true Templar in this struggle?

Other nations went into this war from various reasons. Russia desired to free herself from the commercial tyranny of Germany as well as to protect the "little brother" Serbia. France was forced to fight or to tread again the bitter vale of humiliation; it needed not the yearning after the Provinces loved and lost—rich Alsace and beautiful Lorraine—to induce her to take up the sword. Italy longed for her Italia yet Irredenta, her unredeemed members. The brutal greed after the world's commerce and wealth, and world power, which induced Germany to go to war, was almost equalled by that of the Fox of the Balkans, who guessed that the Central Powers would win the war—thank God, he guessed wrong—and struck the treacherous blow that his country and he might be aggrandized. Austria in part was influenced by desire of territorial expansion and in part was hypnotized by her dominant partner; while poor Turkey was almost literally kicked into war by her German Old Man of the Sea.

But Britain had no lack of commerce. She was as she is-supreme in wealth and the mightiest power in the world. She had no jealousy of others or fear of rivals. She had as much territory as she desired and more, the weary Titan bearing much more than a fair share of the White Man's burden. She had no Britannia Irredenta, no lost Provinces to recover; no nation dictated her financial policy or her customs tariff. She wished nothing more and nothing else than to be let alone to carry on her business and to develop in her own way. There may have been here and there a fire-eater who believing that a conflict with the arrogant braggart of Central Europe was inevitable, thought it might as well come now as later; there may have been here and there a merchant or a financier who, weary of unfair competition, was willing. nay even desirous that the good-natured complaisance of Britain toward her ungrateful and sneaking competitor should cease and that that nation should be taught if necessary by the sword that its underhanded conduct must cease; here and there, there may have been an adventurer, a restless spirit who desired war for its own sake: but I say without hesitation and without fear of successful contradiction that the great mass of the British people, gentle and simple, noble, merchant and labourer, had a passion for peace, desired nothing but peace, envied and hated no people, wanted but to be let alone.

That was not to be.

The Blond Beast made his spring so long prepared; an innocent people who had done nothing to offend, whose sole crime was their standing in the Beast's way, were invaded, ravaged, tortured. Their cry went out to Britain: "We have kept the faith pledged to you, will you fail us?" The great heart of Britain throbbed with sympathy, her people rose as one. "No—

'A scrap of paper where a name is set,
Is strong as duty's pledge and honour's debt'"—

the "contemptible little army" was sent across the Channel, and Britain strains every nerve for the right.

A pure mind she has; her conflict is not for power or wealth or territory, but that her faith may be kept, her honour unsullied; and she fights for the supreme and true King whose word is the moral law—the law of right and justice.

Nothing else could have so moved the soul of the Old Land; not alone the Britain of the patrician, but the Britain of the middle class and of the lower class and of the lowest class felt the appeal to the innate sense of justice which is found in all men who have not smothered it. Had Germany only attacked France, only warred against Russia and Serbia, Britain might indeed at length have been drawn into the vortex, but it would have been a divided Britain, not the unanimous Britain who raised her lance and put on her armour for wronged and martyred Belgium.

And could Canada refrain? Canada herself knew what it was to be invaded; in 1775, Arnold at Quebec met resistance from the gallant French-Canadian Chasseurs; in 1812, Hull was met at Detroit, Van Rensselaer at Queenston Heights, others at Lundy's Lane and Crysler's Farm by Upper Canadian Militia as well as by British Regulars, at Chateauguay by De Salaberry and his Voltigeurs, and the gallant Highlanders of Glengarry; in 1866 our University boys showed their courage with their comrades in the Fenian Raid. All these invasions, indeed, were with the avowed purpose of freeing our country from supposed British tyranny and not to enslave and murder our people as the Hun is doing in Belgium and wherever else his power prevails; but none the less, Canadians fought for their own ideals and their right to develop in their own way. Nor was it in Canada alone that the prowess of Canadians was felt. From Kars, where the Nova Scotian Williams held the fort long after hope had vanished from the heart of others, to Paardeburg, whose victory was in no small degree due to Canadian dash and valour; from the Rapids of the Nile, where the panting boatman hoping against hope, pressed on to save Gordon, to Mafeking, where the Empire called, Canada was seen ready to do and die.

War had not been declared when our Prime Minister pledged to the Mother across the sea our last man and our last dollar—and four hundred thousand Canadians have put on the King's uniform and another hundred thousand are on the way, to implement the pledge so proudly given.

During the course of the war many changes have taken place; many things which would not have been insisted upon at first, have now been shown to be necessary.

Britain both at home and in South Africa looked without suspicion on the efforts at colonization by Germany in the Dark Continent. Straightforward and open herself in her Colonial policy, she did not suspect Germany of treachery in hers. But now it is known that the German colonies were arsenals of weapons with which to attack the British colonies and to drive Britain from Africa; the infamous slaughter of her own blacks and the cunning tampering with those under the British flag show that Germany is a treacherous and unsafe neighbour, and she cannot again be allowed to colonize in Africa, or in the Isles of the Sea.

When the two provinces of Alsace and Lorraine were torn from the bleeding side of France, they did not become a second Eve, a new and beautiful entity, but leaving an open wound in the side of the mother, they remained a festering sore in the side of Germany. They must come back. France can never again see her body dismembered; her children cannot be kept away any longer, they must come home.

Turkey, so long the problem of Europe, has solved its own problem—it has pushed itself into the hand of Germany a willing instrument of every horror of murder and massacre. Bad enough when it had volition of its own, at least it was sometimes amenable to reason,—but now a mere sword in the hand of Germany, as well seek reason in the inanimate iron as in Turkey. And therefore Turkey must go—the cup of its iniquity is full.

Bulgaria, which bit the hand which fed her, which turned on the nation which at the expense of seas of blood and millions of treasure set her free from Turkish torture, Bulgaria, which judged the occasion fit for profit at the expense of honour and gratitude, and which dealt the traitor's blow, must be taught that there is a moral law between nations as between men, the violation of which inevitably brings its own punishment.

Victory is in the air, but we cannot yet relax our efforts.

Within the last few days it has become possible, even probable, that our neighbours to the south may be drawn into a conflict with our enemies.

I was one of those who believed that the future peace of the world would be brought about by the English-speaking nations and that belief is not yet dead. I spent no little time in the endeavour to make the people of the United States and our own people better known to each other, for I was, and am, wholly confident that the more we know of each other the more we will see and feel our fundamental unity.

But during the war, there has been a change in moral as in material values. Many of us, fervently hoping that the United States might keep out of the war, yet expected and longingly awaited the word of approbation for the one side, the word of rebuke, even of stern protest against breach of treaty and brutal oppression by the other. It did not come; but instead came the injunction that the American people show passive neutrality in deed, word and thought. I have no complaint to make. The President of the United States and the people of the United States are guardians of their own honour; they have a right to do or say what they please concerning their own affairs. I have some difficulty, indeed, in understanding neutrality in thought, unless it is negation of thought, the easiest of all virtues and the most generally practised. But the President was speaking to his own people, and it is no business of mine what he said or what he meant.

When, however, a short time ago the President said that this war should end in a peace without victory, he was speaking not alone to his own people, but to the world at large, and to Canada; and I think the universal sentiment of Canadians was, "Don't butt in," "You kept silent when Belgium was outraged, when Serbia was overrun, don't interfere now; the peace with which this war will end is the peace which the Allies dictate; they who have borne the burden and the heat of the day, who have poured out their blood

and treasure as water for democracy and right will see to it that the right peace is made, and if it be necessary to have victory in order to have that peace, they will have victory."

Matters are not quite the same now as a month ago, but there is no material change. If the United States go to war, it will not be our war except in the sense that it will be against our enemies. The United States will go to war to protect its own people from slaughter, its own ships from destruction, its own property from being captured or destroyed. The United States may logically make a peace without victory; let but the Huns and the Turks agree not to butcher American sailors and agree to spare American ships and Washington may say, "My task is done; let us have peace."

But our war is for broader, more far-reaching objects: international morality, the right of every nation, small as well as large, to live and develop in its own way, that the democratic people may remain democratic, that government of the people by the people for the people may not perish from off the face of the earth.

If the United States has abdicated its place as the leader of democracy on this continent, Canada takes it up, for Canada has found her soul, never again to lose it.

Blow, bugles, blow! They brought us, for our dearth Holiness, lacked so long, and Love and Pain.

Honour has come back, as a king, to carth,
And paid his subjects with a royal wage;
And Nobleness walks in our ways again;
And we have come into our heritage.

Canada then must stand beside her Mother till victory is won. We of the Allies must depend upon ourselves, welcoming any assistance the United States may give and in any case demanding the sympathy of every lover of democracy in the United States as elsewhere.

We sometimes boast of what Canada has done—what Ontario has done—what Toronto has done—what our Lodge or our Society has done. All these have done nothing but pay a little money. What can a Dominion or a Province or a City or a Lodge do but pay a little money? What can aged and aging men do but talk and pay money? Not to these be the honour, not to these the praise.

The glory and honour are owing and must be paid to the splendid lads who have donned khaki, who, whether on the plains of France and Flanders, in old England, on the Sea or in our own dear Canada, have done and are doing their bit for the cause of us all.

It is to these men that I am asked to propose a toast—and it is for that reason that I am so proud to be asked to propose this toast.

I ask you to charge your glasses and to drink with me to that gallant band,—The Canadian Forces.

God bless them and God keep them-The Canadian Forces.



Honor Roll

Members of Cyrene Preceptory with Canadian Expeditionary Forces

Sir Kt. C. W. Anderson

J. E. Brown

Rt. Em.

D. A. Clark

J. A. Currie

R. H. Cuthbert

" I. A. Gilpin

" John M. Gibson

" A. S. Hamilton

" Daniel Hillman

" A. T. Hunter

" C. M. Ingall

" E. C. Johnston

" John Sharp

" Robert A. Shaw

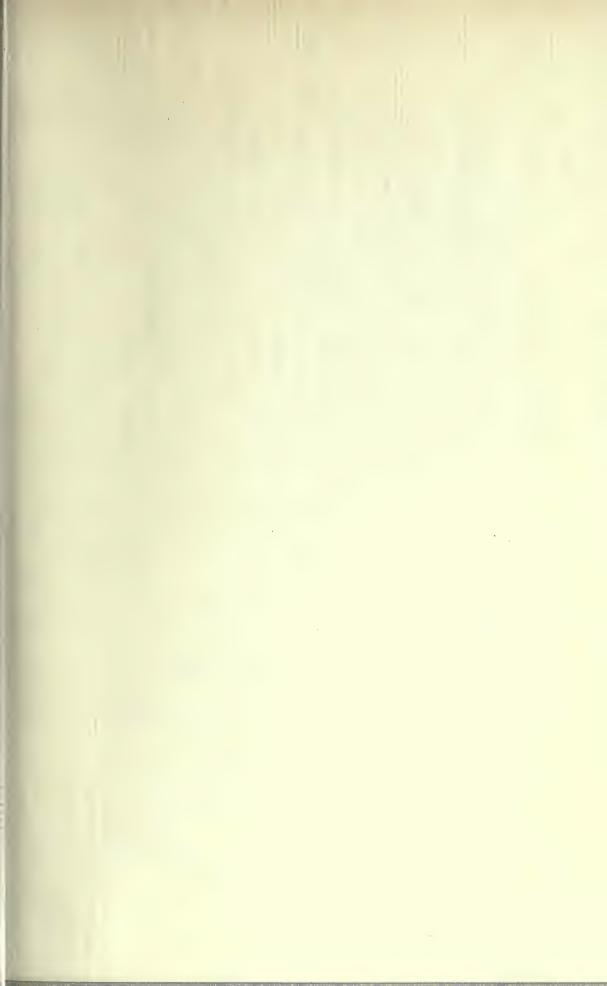
" Ul. E. Struthers

Em. " Raymond Walker, Ir.

" III. II. Wellmood

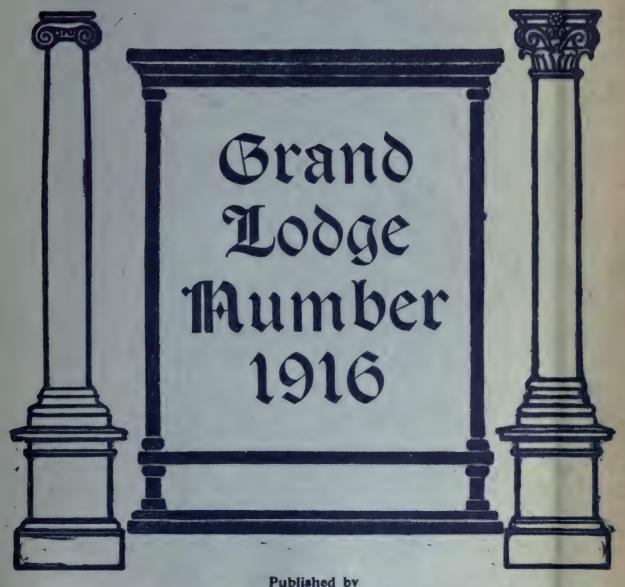
" Geo. H. Woodburn

" James A. Wilson





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our Past Masters' Association, I am sure that influential body could do much to remove this stain upon our reputation in Toronto.

"OBSERVER."

Toronto, June 29th, 1916.

FREEMASONRY IN THE PRESENT CRISIS

An Address Recently Delivered Before the Victoria Lodge, No. 474 (G.R.C.), A.F. & A.M., Toronto, Ont., by William Renwick Riddell, LL.D., etc., Justice of the Supreme Court of Ontario.

The world is in the crucible and is remaking. Armageddon has come and the last great fight is in pro-Every nation must declare itself on one side or the other and must show its sympathies by word or by deed; every institution is on trial and must give an account of itself, of its principles, its precepts, its tendencies.

And Masonry cannot escape the test. I to-night apply the touchstone, use the test tube, the furnace. the balance—in a feeble and human way and with feeble and human powers, thoroughly recognizing my utter fallibility, I shall write upon her wall "Mene, mene, tekel"; and then, with you, consider whether

"Upharsin" is to follow.

I have no great concern with the history of Masonry; much of it mythical as all unwritten history must be, much of it trivial as is the early history of every land and every ancient institution. No doubt, as man retains in his body and, indeed it may be, in his mind, the remains of organs, instincts, which belong to the earlier history of the species, as we still retain in our law, the remains, relics, of the customs of our ancestors, Celt, Saxon, Norman, or their masters, the Roman, whether military or clerical, so in Masonry are the remains, relics, of an earlier state, a state more wedded to mystery, fonder of ceremonial, charmed with ritual, addicted to the bizarre and the surprising. Were it not for our native conservatism, our dislike to "remove the ancient landmarks," there are matters in our beloved Order which we might desire to see changed; there are oaths which could with advantage lose some of their gruesomeness, some of the "frightfulness" of the penalty invoked for breach of them; there are charges which are in some parts not only of doubtful or of no utility but even positively misleading in the light of modern discovery thought; there is much which is based upon what we should now consider a wrong view of the aim and end of Masonry, its real significance as a worldwide organization and its true place in society. Much there is which we owe to the parent body adopting the views of William Preston, one of the most ardent of Masons, thoughtful of scholars and whole-souled lovers of his land and his brethren, but in many things not much in advance of his day—and that day was a century ago.

What I examine is Masonry of the present, the active, living organism with vigorous life and vigorous shoots, though amongst them may perchance be found an occasional dying branch or one already become decayed, a branch which the tree shot forth in its earlier days, which did its work for its period but which in the course of time has become withered and useless, it cumbers the parent stock and might well be pruned away and cast into the fire. A tree is judged by its present not by its past, by the branches which live, not by the occasional one which is dead. The destruction of the dead would but add to the vigor and

usefulness of the living, would but remove an obstacle to the fullest life and fullest development of a noble tree.

How, then, does our Order stand in the present in reference to the

greatest of all struggles?

The murder of the Archduke at Sarajevo, of which at one time so much was made, is now almost forgotten; every one now knows, every one now admits, that it was the merest of pretences for this terrible war. The war had been in preparation for a generation; both subjectively and objectively the German nation had been made ready for it. Commerce, diplomacy, religion itself had all been pressed into service—the German merchant was the German spy, the German diplomat or ambassador was (as he is) the centre of German intrigue, the German missionary was the German emissary to stir up hatred against the coming enemy amongst the non-Christian natives and those converted to his form of Christianity. The army was ready to the last button; canon, machine gun, rifle, all were prepared; uniform, equipment, fieldhospital, field-kitchen, everywhere at hand; shot and shell in overwhelming abundance. All this was prudence, the foresight of a government which knew what it wanted, knew what was necessary for its purpose and had ample means to provide everything, however large and however costly.

The mind of the German was prepared—the monstrous doctrine of the superman, the being of the class above the rest of humanity, who might, indeed, be courteous and might, indeed, owe some duty to his equal, a member of his own class, but who owed neither duty nor courtesy to the ordinary human being—was taught and insisted upon in the schools and universities, in the press

and in the pulpit of that central empire. That the German was the superman was of course; that the man of every nation was his inferior followed as a natural consequence.

Now every nation has its own "kultur" of which it is proud, its own self-esteem and self-conceit, its own idea of its superiority to any other. The Greek called all those who did not speak their language Barbaroi—barbarians, stammering, non-articulate, rude, uncultured, inferior creatures. The proud Roman imitated the Greek, and the Italian his ancestor the Roman—all peoples have thought themselves better than all others. At least in modern times this self-esteem has been in most cases harmless, amusing, recognized as baseless by the best and highest of each people themselves. Prussia is the exception. It is not a pose, an affectation—the Prussian is thoroughly convinced, as sure as he is of his own existence, that he is the highest type of humanity which has ever come upon this earth; and that there can be no higher. All others are uncultured, utterly inferior, they need his guidance and governing hand—he must crucify them for their own good and for his own glory. Just as until a few generations ago most Southerners, and even now some Southerners, looked and look upon the negro, so the Prussian looked upon the Frenchman and the Russian—they had no rights which he was bound to respect and his will should be their law: if he had the power he would impose it upon them; if not, he must submit to the injustice of fate till a favorable opportunity should arise to assert his rights. A striking example of what Germany boasts as her best thought is to be found in a statement to a religious and supposedly Christian congregation. We read that

'Prof. Rheinhold Seeby, who teaches theology in the University of Berlin, said in Berlin Cathedral: "We do not hate our enemies. We obey the command of God, who tells us to love them. But we believe that in killing them, in putting them to suffering, in burning their houses, in invading their territories, we simply perform a work of charity. Divine love is seen everywhere in the world, but men have to suffer for their salvation. Human parents love their children, yet they chastise them. Germany loves other nations, and when she punishes them it is for their good."

Freemasonry knows no distinction of race or color. Some organizations there are which debar from their membership those not of the Caucasian race, "white" men—that, they have a perfect right to do. Every body of men have a right to decide who may and who may not join them, with whom they will and with whom they will not associate—that is their affair, and no one has any right to complain or to criticize. All men are born free and equal, but "equal" means "equal before the law"—and nothing more.

Masonry holds with the apostle that God hath made of one blood all nations of men for to dwell on all the face of the earth. She holds that man is man and that no people are so superior to all others that they may interfere with the rights of any other, that they may undertake to compel any other to regard and follow their views of conduct. Masonry rightly abhors the thought that one man may force his will upon another, and that any man may be prevented from being, becoming and remaining a free agent.

The Prussian conception, too, necessarily involves the utter submission of the individual to the State, the destruction of individuality, of individual opinion and judgment in all that pertains to the state. There must in their system needs be a governing class which rules, whose business it is to rule,



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All communications should be addressed to the Steam Boiler Branch, Department of Public Works, Parliament Buildings, Toronto.

HON. FINLEY G. MACDIARMID Minister of Public Works.

D. M. MEDCALF Chief Inspector of Steam Boilers

responsible not to the ruled but to the Supreme Lord, who also is a necessary part of such a system.

The Prussian cannot understand that theory of citizenship which calls upon the citizen to decide as the right or wrong, the wisdom or unwisdom of laws, rules, regulations. The private individual has nothing to do with the laws but to obey them (as an English prelate years ago said of the English common people). All laws and regulations are provided by those whose business it is, Die Obrigkeit, which has its heavy hand on every institution and every person in the whole Empire.

The Prussian king, the German Kaiser, repudiates, as he must repudiate, the thought that he is responsible to his people. His autocratic ancestor nearly seventy years ago refused the emperorship of Germany when it was offered to him in

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the name of the people of Germany. He would not accept from their hands a crown which he must needs wear as coming from them and therefore to be taken away by them at their will. The Kaiser was foreordained to be emperor, to God alone he owes his throne, to God alone is he responsible, his people have no political rights which he is bound to respect, the constitution is not the work of the people but the gift of the It is not alone lèse majesté but it is blasphemy to raise the voice against the Lord's anointed. It is not without significance that Krause, the greatest of the German writers on Freemasonry, teaches that it is for the state to work out the perfection of the individual and of society.

In our system the individual does not exist for the State and as an instrument for the advancement of the State—the State exists for the individual and as an instrument for the advancement of the individual. True it is that during the present colossal war, Britain is more and more learning that in war the individual must give way to the needs of the State. that the forces of the State must be mobilized, systematized, nationalized to an extent in her history wholly unheard of. Heretofore the ordinary Englishman has looked upon a war as something to be paid for, something which did not interfere with his daily life, occupation, amusement—or anything but his The individualism which runs through our whole thought and system induced him to say, "Let

those fight who are willing to fight, I shall pay." Even in that war which was thought so terrible in its time, when it seemed almost as though the sun of the Empire would go down in blood, when hundreds of our gallant Canadians were fighting and suffering and dying on the plains of South Africa, and the mother country was, as she thought, straining every nerve—the ordinary Englishman, Scotsman, Irishman had not his usual routine of business study or pleasure dislocated. paid a little more taxes, was a little less luxurious perhaps, but that was

In the face of the present peril, Britain knows her very life is at stake. It is not whether she will have an increase or decrease in her commerce, it is not whether her splendid career in Africa and elsewhere is to be checked, whether she, the greatest secular agency for good the world ever saw, is to be hampered in her beneficent work, but whether she is to live as a free She is, then, awakened to the tremendous fact that now it is not a question of placing the bank account of the citizen at the command of the State, the man and woman must place themselves at its disposal with all their powers, physical and mental as well as financial.

But this is in time of war and in order "to fight the devil with fire." It is recognized that this is not the normal state, that it will not continue in its entirety when peace is confirmed as it must be some day. Britain may never again be the easygoing, trustful, complaisant nation, generous to competitors for the world's trade, thinking no evil of others, which she was—but so long as Britain is Britain, her subjects will be free, free to live their own lives without State compulsion or State supervision. Her subjects

will insist that she exists for them, not they for her. It is not for the State but for the individual to work out salvation for individual and State.

So, too, our King owes his throne not to the grace of God (the official title to the contrary notwithstanding), but to an Act of Parliament—and that Act of Parliament might be repealed at any time. In other words the power of the King comes from the people: the power of the Kaiser does not.

In Freemasonry, there are Masters and Grand Masters. None of these derives his position from God (except as we all are in the place God intends us to occupy). Every one of them is chosen by his fellows, he owes his position to his fellows and he is responsible to his fellows. He is not above the law, he is under the law and his acts have validity only if they are in accordance with the law.

Freemasonry does not make Freemasonry an end in itself. It recognizes that it exists for Freemasons and through Freemasons for the good of the world: and, recognizing that the State has its true place, a most important place, Freemasonry does not and never did acknowledge that the State has the right to the implicit and servile obedience of citizens, and certainly it never recognized and never will recognize that any mere man has been, is, or can be commissioned by God to impose obedience upon the world or any part of it or to govern it without its free and willing consent.

Masonry admits none superior to her own members; but at the same time she claims no superiority to others; nor does she antagonize, at least intentionally, any who are doing the right.

I have always thought it a calamity that fraternal relations were ever

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severed with the Grand Orient of France. I am not sure that the alleged reason was the real and only reason for the breaking of the brotherly tie—I think it was not. But however that may be, it is not too much to hope—and certainly it is not too much to wish—that the heroic valor of men of the Grand Orient on the bloody fields of France and Flanders may show that a French Freemason is a man—and with a man, no Freemason can refuse to fellowship.

It is sometimes said that Masonry is antagonistic to the Church of Rome. If that were so, I should not be addressing you. There may be organizations whose objects or one of whose objects can fairly be said to be opposition to Roman Catholicism. Masonry is not one of these. She has no antipathy to the Catholic. She opens her doors wide to the Catholic. She ignores the opposition of the Church of Rome and refuses to allow herself to be placed in a false position. may be that from the point of view of his Church, no Catholic can become a Freemason and remain a Catholic. I do not know,—that depends upon the rules of the Church with which I am not familiar; but from the point of view of his Order, a Freemason may become a Catholic and remain a Freemason—that depends upon the laws of Freemasonry, with which I am.

To return to our subject. As a necessary consequence of the Prus-

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And what of the conduct of Britain? Even Germany admitted at first, that Britain did all that she could to prevent the outbreak of war; until Germany saw that Britain would not play the part of the contract-breaker, would not assent to the infamous propositions of Germany, even Germany gave Britain high praise, and justly so. Of course, when the full extent of

German treachery and ambition was disclosed and Britain took her stand for the right, the tune was changed and Germany tried to throw upon her some part if not the whole of the blame for the war. No one believes Germany—except a few Germans at home or abroad, if even they. Britain did all that was humanly possible, all that Germany would permit her to do to avoid this fearful conflict—but in vain. And when the voice of wronged Belgium came across the channel, imploring the fulfilment of the promise of assistance, Britain sprang to arms as one man to defend the innocent and succor the unfortunate.

With which cause does Masonry sympathize? With the "blond beast," trampling all in his way, sparing nor old nor young, nor man nor woman, nor priest nor laymanlaying waste and destroying garden and field and church and cottage levying a toll of blood and agony and death and worse than deathor the new St. George against fearful odds rushing to defend the innocent and destroy the monster? To ask the question is to answer it. And if actions speak louder than words, let the tens of thousands of dollars sent by the Masons of the Grand Register of Canada in this one province of Ontario, to King Albert of Belgium, give answer in clarion note.

And our Canada, the brightest gem in Britannia's crown, the home of millions of free and happy subjects of Britain's King and her own, what more has she to say? Proudly she throws herself into the fray; loving peace, hating war—for with us war is no national sacrament—we are not ashamed to be at war but proud that we may take our share of the burden of supporting and defending democracy and justice. But the other day I had a letter from an American friend, in which he said: "I want to assure you of the sympathy which we Americans have for you Canadians in this titanic war." I sat down immediately and wrote: "I thank you for American sympathy for us in this war. Are you quite sure you do not mean envy?" I had no reply for some days, and then it came: "Yes, I do mean envy." What freeborn man but must exult in the chance to strike a blow for freedom? What redblooded native or resident of this continent but must be proud to be allowed to assist the best in the other hemisphere in the defeat of the worst enemy to mankind either hemisphere has ever seen?

Canada has found her soul, never to lose it. She has voluntarily taken her stand, and come weal, come woe, she cannot be moved from it. Canadian Masons unanimously approve her course, and there can be no true Mason who does not. I do not need to tell Masons that Masonry stands now as she always did for freedom, political as well as social and religious.

And Masonry, too, loves peace, but she recognizes that in July, 1914, peace could not be the part of Britain or of Canada without the loss of honor. I do not mean the kind of honor which is supposed to flow from military prowess, from naval victory, from mighty armies or crowded marts, but that honor which consists in freedom, in keeping pledged faith, in protecting the weak and the innocent. Peace was impossible unless Britain was willing to debase herself, fling aside as not worth retaining the splendid name she had made by centuries of effort, sometimes mistaken perhaps, but in the main for the right —unless she ignored her real position in the world won at such cost a hundred years ago. And now

we hear rumors of peace. Long ago it was confidently prophesied by those who knew Germany that once she found her course checked, once the tide began to turn against her arms, she would begin to whimper about peace. She would express her desire for an honorable peace, and endeavor to throw the blame for a continuation of war upon the Allies and especially upon Britain. prophecy has been fulfilled to the Germany has failed in her tiger-spring, time is against her, her resources dwindle, her men die, she knows her end near—and just as foretold, she whines. Lying, began the war, blaming Britain for it; lying, she desires to end the war, blaming Britain because she cannot end it in her own way.

It is idle crying peace, peace, when there is no peace. There can be no peace now. Were the Allies to consent to peace on any such terms as the Prussian desires, it would simply give time for him to gather munitions of war, raise further troops, increase his navy, and await a favorable opportunity to strike. He would at once by lying and fraud, stir up suspicion between the Allies, he would set one proud nation against another, for I say deliberately that every nation knows facts about all the other nations sufficient, if adroitly and unscrupulously used, to rouse angry passion and to justify any nation declaring war against any other if it is seeking for a pretext.

Now, when Britain and France, Russia and Italy and Japan are at one, nothing can prevent Germany's overwhelming defeat. That would

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not be certain if France were detached or Russia, perhaps, nor if Italy or Japan were on Germany's side.

Another score of years, or two score, or more, the world would be watching the treacherous giantwhose word is as naught, whose heart is of stone, whose conscience is seared as with a hot iron—preparing, preparing, at first with obsequious and pretended friendliness and frankness, then becoming more and more confident, and as a consequence more and more insolent. "Can the Ethiopian change his skin or the leopard his spots? then may ye also do good, that are accustomed to do evil." The Prussian spirit is as natural and necessary to the Prussian as the dark skin to the Ethiopian or the spots to the leopard. sword soon begins again to rattle in the scabbard, shining armor is again the glorified costume of Germania, Attila and his Huns again the object of admiration, held up as an example to follow. And when the right time comes, when "der Tag" is arrived, then the bound of the beast of prey, fearing nothing indeed, but sparing nothing, the superman run amok.

Better fight it out now once and for all. Better this generation suffer more and longer than that the next and the next and the next should share our Gethsemane. Some time the horrible spirit must be dominated, the spectre laid; and there is no time like the present. Freedom and democracy must eventually conquer and bear beneficent sway—let that, most devoutly to be wished for, come as soon as possible. Let us clear out of the way the fiend of militarism that the world may settle down to the ways of peace, every nation large and small may work out its own destiny without the eternal fear of brutal interference and domination by the power which has made itself the very nightmare of the world. So long as Germany is not beaten down in arms or so long as she does not repent her present state of mind, it will be impossible that the nations can "beat their swords into ploughshares, and their spears into reaping hooks, that nation shall not lift up sword against nation, neither shall they learn war any more."

Masonry, free and democratic, cannot but uphold the hands of those who are bringing on a real peace, a lasting peace, based as it must be and can only be on the signal and utter defeat of the Hun who desires neither freedom for others nor democracy for himself. "If Germany conquers nothing else in God's world matters."

Or if this be not the position of Masonry, "Mene, mene, tekel, Upharsin": she is weighed in the balances and found wanting, and her kingdom must be divided and given to others more worthy.

This shall not be. Masonry will stand for the right, give of her means for the right, give of her sons for the right. Serene she will wait, caring for no wind or tide of sea, in the sure and certain hope that right will prevail.

ZETLAND MASONIC CHOIR Letters from Bro. Rudyard Kipling and Lady Hughes

At the solicitation of Bro. John F. Holloway, for years a member of the choir of Zetland Lodge, Toronto, but now of Lindsay, and the officers of the 109th Battalion of Lindsay and Haliburton, C.E.F., the Choir journeyed to Lindsay in March in a Private Car and gave a Patriotic concert under the patronage of Lady Hughes.

Two poems, written by a member of the Choir were used on the pro-

FREEMASONRY IN THE PRESENT CRISIS

An Address Recently Delivered Before the Victoria Lodge, No. 474 (G.R.C.), A.F. & A.M., Toronto, Ont., by William Renwick Riddell, LL.D., etc., Justice of the Supreme Court of Ontario.

The world is in the crucible and is remaking. Armageddon has come and the last great fight is in progress. Every nation must declare itself on one side or the other and must show its sympathies by word or by deed; every institution is on trial and must give an account of itself, of its principles, its precepts, its tendencies.

And Masonry cannot escape the test. I to-night apply_the touch-stone, use the test tube, the furnace, the balance—in a feeble and human way and with feeble and human powers, thoroughly recognizing my utter fallibility, I shall write upon her wall "Mene, mene, tekel"; and then, with you, consider whether "Upharsin" is to follow.

I have no great concern with the history of Masonry; much of it mythical as all unwritten history must be, much of it trivial as is the early history of every land and every ancient institution. No doubt, as man retains in his body and, indeed it may be, in his mind, the remains of organs, instincts, which belong to the earlier history of the species, as we still retain in our law, the remains, relics, of the customs of our ancestors, Celt, Saxon, Norman, or their masters, the Roman, whether military or clerical, so in Masonry are the remains, relics, of an earlier state, a state more wedded to mystery, fonder of ceremonial, charmed with ritual, addicted to the bizarre and the surprising. Were it not for our native conservatism, our dislike to "remove the ancient landmarks," there are matters in our beloved Order which we might desire to see changed; there are oaths which could with advantage lose some of their gruesomeness, some of the "frightfulness" of the penalty invoked for breach of them; there are charges which are in some parts not only of doubtful or of no utility but even positively misleading in the light of modern discovery and thought; there is much which is based upon what we should now consider a wrong view of the aim and end of Masonry, its real significance as a worldwide organization and its true place in society. Much there is which we owe to the parent body adopting the views of William Preston, one of the most ardent of Masons, thoughtful of scholars and whole-souled lovers of his land and his brethren, but in many things not much in advance of his day—and that day was a century ago.

What I examine is Masonry of the present, the active, living organism with vigorous life and vigorous shoots, though amongst them may perchance be found an occasional dying branch or one already become decayed, a branch which the tree shot forth in its earlier days, which did its work for its period but which in the course of time has become withered and useless, it cumbers the parent stock and might well be pruned away and cast into the fire. A tree is judged by its present not by its past, by the branches which live, not by the occasional one which is dead. The destruction of the dead would but add to the vigor and usefulness of the living, would but remove an obstacle to the fullest life and fullest development of a noble tree.

How, then, does our Order stand in the present in reference to the greatest of all struggles?

The murder of the Archduke at Sarajevo, of which at one time so much was made, is now almost forgotten; every one now knows, every

one now admits, that it was the merest of pretences for this terrible war. The war had been in preparation for a generation; both subjectively and objectively the German nation had been made ready for it. Commerce, diplomacy, religion itself had all been pressed into service—the German merchant was the German spy, the German diplomat or ambassador was (as he is) the centre of German intrigue, the German missionary was the German emissary to stir up hatred against the coming enemy amongst the non-Christian natives and those converted to his form of Christianity. The army was ready to the last button; canon, machine gun, rifle, all were prepared; uniform, equipment, fieldhospital, field-kitchen, everywhere at hand; shot and shell in overwhelming abundance. All this was prudence, the foresight of a government which knew what it wanted, knew what was necessary for its purpose and had ample means to provide everything, however large and however costly.

The mind of the German was prepared—the monstrous doctrine of the superman, the being of the class above the rest of humanity, who might, indeed, be courteous and might, indeed, owe some duty to his equal, a member of his own class, but who owed neither duty nor courtesy to the ordinary human being was taught and insisted upon in the schools and universities, in the press and in the pulpit of that central empire. That the German was the superman was of course; that the man of every nation was his inferior followed as a natural consequence.

Now every nation has its own "kultur" of which it is proud, its own self-esteem and self-conceit, its own idea of its superiority to any other. The Greek called all those who did not speak their language Barbaroi—barbarians, stammering, non-articulate, rude, uncultured, inferior creatures. The proud Roman

imitated the Greek, and the Italian his ancestor the Roman—all peoples have thought themselves better than all others. At least in modern times this self-esteem has been in most cases harmless, amusing, recognized baseless by the best and highest of each people themselves. Prussia is the exception. It is not a pose, an affectation—the Prussian is thoroughly convinced, as sure as he is of his own existence, that he is the highest type of humanity which has ever come upon this earth; and that there can be no higher. All others are uncultured, utterly inferior, they need his guidance and governing hand—he must crucify them for their own good and for his own glory. Just as until a few generations ago most Southerners, and even now some Southerners, looked and look upon the negro, so the Prussian looked upon the Frenchman and the Russian—they had no rights which he was bound to respect and his will should be their law: if he had the power he would impose it upon them; if not, he must submit to the injustice of fate till a favorable opportunity should arise to assert his rights. A striking example of what Germany boasts as her best thought is to be found in a statement to a religious and supposedly Christian congregation. We read that

'Prof. Rheinhold Seeby, who teaches theology in the University of Berlin, said in Berlin Cathedral: "We do not hate our enemies. We obey the command of God, who tells us to love them. But we believe that in killing them, in putting them to suffering, in burning their houses, in invading their territories, we simply perform a work of charity. Divine love is seen everywhere in the world, but men have to suffer for their salvation. Human parents love their children, yet they chastise them. Germany loves other nations, and when she punishes them it is for their good."

Freemasonry knows no distinction of race or color. Some organizations there are which debar from their membership those not of the Caucasian race, "white" men—that,

they have a perfect right to do. Every body of men have a right to decide who may and who may not join them, with whom they will and with whom they will not associate—that is their affair, and no one has any right to complain or to criticize. All men are born free and equal, but "equal" means "equal before the law"—and nothing more.

Masonry holds with the apostle that God hath made of one blood all nations of men for to dwell on all the face of the earth. She holds that man is man and that no people are so superior to all others that they may interfere with the rights of any other, that they may undertake to compel any other to regard and follow their views of conduct. Masonry rightly abhors the thought that one man may force his will upon another, and that any man may be prevented from being, becoming and remaining a free agent.

The Prussian conception, too, necessarily involves the utter submission of the individual to the State, the destruction of individuality, of individual opinion and judgment in all that pertains to the state. There must in their system needs be a governing class which rules, whose business it is to rule, responsible not to the ruled but to the Supreme Lord, who also is a necessary part of such a system.

The Prussian cannot understand that theory of citizenship which calls upon the citizen to decide as the right or wrong, the wisdom or unwisdom of laws, rules, regulations. The private individual has nothing to do with the laws but to obey them (as an English prelate years ago said of the English common people). All laws and regulations are provided by those whose business it is, Die Obrigkeit, which has its heavy hand on every institution and every person in the whole Empire.

The Prussian king, the German Kaiser, repudiates, as he must repudiate, the thought that he is re-

sponsible to his people. His autocratic ancestor nearly seventy years ago refused the emperorship of Germany when it was offered to him in the name of the people of Germany. He would not accept from their hands a crown which he must needs wear as coming from them and therefore to be taken away by them at their will. The Kaiser was foreordained to be emperor, to God alone he owes his throne, to God alone is he responsible, his people have no political rights which he is bound to respect, the constitution is not the work of the people but the gift of the king. It is not alone lèse majesté but it is blasphemy to raise the voice against the Lord's anointed. It is not without significance that Krause, the greatest of the German writers on Freemasonry, teaches that it is for the state to work out the perfection of the individual and of society.

In our system the individual does not exist for the State and as an instrument for the advancement of the State—the State exists for the individual and as an instrument for the advancement of the individual. True it is that during the present colossal war, Britain is more and more learning that in war the individual must give way to the needs of the State, that the forces of the State must be mobilized, systematized, nationalized to an extent in her history wholly unheard of. Heretofore the ordinary Englishman has looked upon a war as something to be paid for, something which did not interfere with his daily life, occupation, amusement—or anything but his The individualism which runs through our whole thought and system induced him to say, "Let those fight who are willing to fight, shall pay." Even in that war which was thought so terrible in its time, when it seemed almost as though the sun of the Empire would go down in blood, when hundreds of our gallant Canadians were fighting and suffering and dying on the plains of South Africa, and the mother country was, as she thought, straining every nerve—the ordinary Englishman, Scotsman, Irishman had not his usual routine of business study or pleasure dislocated. He paid a little more taxes, was a little less luxurious perhaps, but that was all.

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Canada has found her soul, never to lose it. She has voluntarily taken her stand, and come weal, come woe, she cannot be moved from it. Canadian Masons unanimously approve her course, and there can be no true Mason who does not. I do not need to tell Masons that Masonry stands now as she always did for freedom, political as well as social and religious.

And Masonry, too, loves peace, but she recognizes that in July, 1914, peace could not be the part of Britain or of Canada without the loss of honor. I do not mean the kind of honor which is supposed to flow from military prowess, from naval victory, from mighty armies

or crowded marts, but that honor which consists in freedom, in keeping pledged faith, in protecting the weak and the innocent. Peace was impossible unless Britain was willing to debase herself, fling aside as not worth retaining the splendid name she had made by centuries of effort, sometimes mistaken perhaps, but in the main for the right -unless she ignored her real position in the world won at such cost a hundred years ago. And now we hear rumors of peace. Long ago it was confidently prophesied by those who knew Germany that once she found her course checked, once the tide began to turn against her arms, she would begin to whimper about peace. She would express her desire for an honorable peace, and endeavor to throw the blame for a continuation of war upon the Allies and especially upon Britain. That prophecy has been fulfilled to the letter. Germany has failed in her tiger-spring, time is against her, her resources dwindle, her men die, she knows her end near-and just as foretold, she whines. Lying, she began the war, blaming Britain for it; lying, she desires to end the war, blaming Britain because she cannot end it in her own way.

It is idle crying peace, peace, when there is no peace. There can be no peace now. Were the Allies to consent to peace on any such terms as the Prussian desires, it would simply give time for him to gather munitions of war, raise further troops, increase his navy, and await a favorable opportunity to strike. He would at once by lying and fraud, stir up suspicion between the Allies, he would set one proud nation against another, for I say deliberately that every nation knows facts about all the other nations sufficient, if adroitly and unscrupulously used, to rouse angry passion and to justify any nation declaring war against any other if it is seeking for a pretext.

Now, when Britain and France,

Russia and Italy and Japan are at one, nothing can prevent Germany's overwhelming defeat. That would not be certain if France were detached or Russia, perhaps, nor if Italy or Japan were on Germany's side.

Another score of years, or two score, or more, the world would be watching the treacherous giantwhose word is as naught, whose heart is of stone, whose conscience is seared as with a hot iron—preparing, preparing, at first with obsequious and pretended friendliness and frankness, then becoming more and more confident, and as a consequence more and more insolent. "Can the Ethiopian change his skin or the leopard his spots? then may ye also do good, that are accustomed to do evil." The Prussian spirit is as natural and necessary to the Prussian as the dark skin to the Ethiopian or the spots to the leopard. sword soon begins again to rattle in the scabbard, shining armor is again the glorified costume of Germania, Attila and his Huns again the object of admiration, held up as an example to follow. And when the right time comes, when "der Tag" is arrived, then the bound of the beast of prey, fearing nothing indeed, but sparing nothing, the superman run amok.

Better fight it out now once and for all. Better this generation suffer more and longer than that the next and the next and the next should share our Gethsemane. Some time the horrible spirit must be dominated, the spectre laid; and there is no time like the present. Freedom and democracy must eventually con-

quer and bear beneficent sway-let that, most devoutly to be wished for, come as soon as possible. Let us clear out of the way the fiend of militarism that the world may settle down to the ways of peace, every nation large and small may work out its own destiny without the eternal fear of brutal interference and domination by the power which has made itself the very nightmare of the world. So long as Germany is not beaten down in arms or so long as she does not repent her present state of mind, it will be impossible that the nations can "beat their swords into ploughshares, and their spears into reaping hooks, that nation shall not lift up sword against nation, neither shall they learn war any more."

Masonry, free and democratic, cannot but uphold the hands of those who are bringing on a real peace, a lasting peace, based as it must be and can only be on the signal and utter defeat of the Hun who desires neither freedom for others nor democracy for himself. "If Germany conquers nothing else in God's world matters."

Or if this be not the position of Masonry, "Mene, mene, tekel, Upharsin": she is weighed in the balances and found wanting, and her kingdom must be divided and given to others more worthy.

This shall not be. Masonry will stand for the right, give of her means for the right, give of her sons for the right. Serene she will wait, caring for no wind or tide of sea, in the sure and certain hope that right will prevail.



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A NEW VIEW OF BARDELL v. PICKWICK

MR. JUSTICE RIDDELL

Judge of the Supreme Court of Ontario.

THIS is perhaps the most celebrated of Common Law cases, not from any element of legal principle involved, but solely from the literary skill of the Reporter. It was a simple action in the Court of Common Pleas of Case in Assumpsit, the cause of action being Breach of Promise of Marriage; but the Reporter was Dickens—not John Dickens, Senior Registrar of the High Court of Chancery, against the accuracy of whose reports much has been and more could be said, but Charles Dickens, "the best and most rapid Reporter ever known" as he says himself. But then he was a Parliamentary Reporter in whom no one looks for accuracy. In no instance has the principle been better exemplified "No defence, abuse the plaintiff's attorneys"— not at the trial, indeed, but before the public.

It is not intended in this article to review the case at length or in detail. The object in view is to examine into the justice of the animadversions express and implied upon the plaintiff's attorneys, Messrs. Dodson and Fogg of Freeman's Court, Cornhill, against whom, solely by reason of the statements concerning them by this Reporter, there has been for many years a strong public sentiment

amounting almost to execration.

Every fair-minded person will cast from his mind any impression derived from the vituperation of the defendant. Every litigant detests the solicitors on the other side; not even the most magnanimous can bring himself to believe that they are not at the bottom of the litigation, either advising and putting up the plaintiff to advance an unjust claim or inducing the defendant to resist a

claim wholly just! 1

Accordingly, when Samuel Pickwick received the courteous letter from Dodson and Fogg informing him that on the instructions of Mrs. Martha Bardell they had issued a writ for breach of promise of marriage and asking the name of his attorney in London who would accept service, it was wholly natural that he should at once and without the least enquiry launch out against them, charge them with conspiracy, "a base conspiracy between these two grasping

attorneys, Dodson & Fogg.....a vile attempt to extort money." So far as appears, Pickwick had never heard of them before; but it was inevitable that when they issued a writ against him they should become in his mind a pair of scoundrels, "vile conspirators". He did not stay to think that Parliament had more than four centuries previously in the reign of the good King Henry of Lancaster, in 1402, prescribed by solemn statute that "all attorneys shall be good and virtuous and of good Fame" (qi sont bons & vertuouses & de bone fame.) These attorneys were aiming at his pocket, and that was enough. The kind of man the defendant was plainly appears by his "abhorrence of the cold-blooded villainy" of counsel for the plaintiff courteously saluting his own counsel, Serjeant Snubbin.

Nor should any dependence be placed upon the seeming slurs of Mr. Perker of Gray's Inn, attorney for the defendant. He had at first declined to join in his client's characterization of Dodson and Fogg as "great scoundrels", but when he was trying to persuade him to act like a reasonable man and get out of gaol, he fell in with Pickwick's whim and called the attorneys (at least by implication) "a couple of rascals," and suggested that they might soon "be led into some piece of knavery." That was said in coaxing an obstinate wrong-headed man: and he said in the same conversation that he could not say that even with Mrs. Bardell's letter there was anything to justify a charge of conspiracy.

He had characterized them as "very smart fellows, very smart fellows indeed", and later as "capital fellows with excellent ideas of effect"; his clerk, Mr. Lowton, said that they were "capital men of business", and at the very end of the matter, when his client was loading the attorneys with opprobrious and offensive epithets, "mean, rascally, pettifogging robbers," Perker never ceased to expostulate and continued to call them "my dear sirs." One cannot of course build much on this "façon de parler." Perker called every one "My dear sir," whether he was Wardle or Jingle, Pickwick or Fogg.

Neither should too much dependence be placed on Mrs. Bardell's ex post facto statements in her letter to Perker that "the business was, from the very first, fomented, encouraged and brought about by these men?" "These men" had put her in gaol, and she was trying to induce Pickwick to get her out. Naturally, she would try to exculpate herself and inculpate those who had gaoled the person she was trying to influence to help her. Moreover, what do these general words "fomented, encouraged, brought about," mean? Do they mean anything more that that on her statement of the facts she had in their opinion a good cause of action, that they

would advise suit, and would not charge her any fees unless the action was successful? Attorneys and solicitors must take the facts as they are disclosed to them by their clients, unless they are obviously untrue. In the present case there can be no doubt that the plaintiff believed that Pickwick had offered her marriage. She does not to the very end suggest any other belief, and no bad faith is attributed to her even by the Reporter. That her friends had the same belief is obvious both from their conversation and from their evidence at the trial. His friends were rather more than suspicious at the time; Tupman, Winkle and Snodgrass "coughed slightly and looked dubiously at each other," evidently suspecting Pickwick and incredulous of his innocence. When the letter announcing action was received, Wardle hoped that the action was only a vile attempt to extort money, but said so "with a short dry cough," and thought Pickwick a "sly dog." Tupman saw the plaintiff "certainly..., reclining in his arms," and Winkle noticed that his "friend was soothing her anguish"; even the ever-faithful Samuel Weller thought "the hemperor" "a rum feller.....makin up to that there Mrs. Bardell...always the vay with these here old 'uns hows'ever, as is such steady goers to look at."

Again, there is much to indicate legal liability in any aspect of the case. While there can be no doubt that Mrs. Bardell thought Pickwick had proposed to her, it is said that Pickwick had no such intention, that there was no consensus ad idem, and therefore there was no contract. This is a partial view of the facts. The law is clear that, whatever a man's real intention may be, if he so conducts himself that the other person would reasonably believe that he means to assert something and that he meant that the other person should act on the assertion, and another does so believe and act, the man is legally in the same position as though he had actually

made the assertion.

Pickwick apparently did not intend to propose marriage, but his conduct was at least equivocal. The plaintiff's child was got out of the way by Pickwick. He was obviously embarrassed, he asked Mrs. Bardell if it was a much greater expense to keep two people than to keep one, and behaved in such a way that any woman in Mrs. Bardell's place might reasonably think he was proposing marriage. She did think this. Even without Pickwick's asking the boy if he should not like to have another father, there was already ample material upon which to found an action. Then just consider Pickwick's subsequent conduct. He must have known the construction placed upon his words by Mrs. Bardell; he does not go to her like a man and explain that it is all a mistake on her part; he

continues his tenancy and goes off himself to Eatanswill. No attorney would be justified in advising against an action with such facts available. It is made a crime in these attorneys that they agreed not to charge any fees except in case of success. Sam Weller gave evidence at the trial that Mrs. Bardell and her friends had said that they were "to charge nothin" at all for costs, unless they got 'em out of Mr. Pickwick." It was on "speculation."

But Weller who as the Reporter boasts was not simply desirous of stating "the truth, the whole truth, and nothing but the truth" but of "doing Messrs. Dodson and Fogg's case as much harm as he conveniently could", adds to what he was really told. All that was said was said by Mrs. Cluppins. "Won't Mr. Dodson and Fogg be wild if the plaintiff shouldn't get it when they do it on speculation?" It is Weller himself who puts the gloss on this language; "the other kind and gen'rous people o' the some perfession as sets people by the ears, free gratis for nothin, and sets their clerks to work to find out little disputes among their neighbours and acquaintance as wants settlin' by means of lawsuits." There is no semblance of evidence that Dodson and Fogg did anything of the kind, but they had sued Sam's master. Yet, even if the attorneys agreed not to charge Mrs. Bardell anything, this was in no way improper in law or in ethics. It is the pride of the profession of law that no person, however poor, is ever prevented from pressing an honest claim from want of means. Scores of actions have been and scores more will be brought for impecunious clients by solicitors who can have no possible hope of payment, or even for out-of-pocket disbursements, unless they are successful and so get their costs out of the defendant. As I write this, I find in a Toronto paper a letter from a practitioner of high standing, in which he speaks of an action carried on to judgment by a solicitor for a plaintiff "without a dollar because the woman had not a dollar to give him..... His costs amounted to \$1,000 and he felt that he could not afford to pay out any more money." No one would think of finding fault with that solicitor. If that was the real bargain, it was enforceable at law; the cognovit of Mrs. Bardell was fraudulent and could be attacked, as could the judgment against her which was based upon it and under which she was imprisoned. Such conduct would be plain dishonesty and wholly inexcusable; but it has nothing to do with the conduct of the attornevs toward Pickwick which is the object of so much animad-It is plain that Perker did not think any thing of the kind could be established, "they are too clever for that." 3

The probability is that Dodson and Fogg took the case "on spec", in the sense that they agreed not to charge any costs unless

they succeeded in the action, in which case they had the right to take a *cognovit* and sign judgment on it; for, as Chief Baron Pollock said, they guaranteed the solvency of the suit and not that of the defendant. ⁴

It would not be astonishing if the attorneys "encouraged" the plaintiff. Everyone who has practised law can tell of clients losing heart and hope and requiring encouragement; if that were a crime, few would escape. It is always the person who is trying to keep the plaintiff out of his legal rights who is indignant at the lawyer "encouraging" the plaintiff. Much is said about "sharp practice." Lowten says: "sharp practice theirs—capital men of business, Dodson and Fogg, Sir." Pickwick "admits the sharp practice of Dodson and Fogg"; Lowten again says: "the sharpest practitioners I ever knew," and Perker chimes in, "Sharp? There's no knowing where to have them:" and the Reporter complains of "the plaintiff having all the advantages derivable not only from the force of circumstances but from the sharp practice of Dodson and Fogg to boot." What does this mean, or does it mean anything?

"Sharp practice" means taking advantage of the rules of practice to embarrass an opponent, to put him to unnecessary costs. to hide behind technicality, to do anything to prevent a fair trial by tampering with witnesses or keeping witnesses away—in a word to take an unfair advantage by rules of practice or otherwise. is not the very slightest evidence of anything of the kind. The writ was issued regularly; proper notice of it was sent; when the defendant did not name a solicitor, he was personally served; the witnesses subpoenaed were in no way tampered with. Counsel for the defendant did not dispute the substantial accuracy of their evidence, the strongest evidence against him was given by his own friends, and what can be more childish than his complaint of the intention of the attorneys "to seek to criminate me upon the testimony of my own friends"? Perker said (as any man of ordinary reason or fairness would say) that of course they would do so, "he knew they would." No solicitor who did his duty by his client would fail to subpoena such important witnesses who had seen the defendant in the delicate situation. There was no sending by them of an agent clandestinely and behind the back of the lawyer on the other side to try and find out what the other side was doing, as was done by Pickwick when he sent Sam to "ascertain how Mrs. Bardell herself seems disposed towards me." Perker "drew himself up with conscious dignity," and rebuked his client for this underhand proceeding. Perker suspected that Sam was subpoenaed to prove an offer of compromise which was not in fact made. No

such evidence was attempted, and nothing was attempted to be

proved at the trial but what undoubtedly took place.

If either side is to be charged with sharp practice, is it not the side which deliberately chose the course to call no witnesses, but trust to counsel's eloquence to throw dust in the eyes of the judge and throw itself upon the jury? Is it any wonder that experienced counsel like Serjeant Snubbin, when he heard the course proposed to be followed, smiled, "rocked his leg with increased violence and . . . coughed dubiously"? It is quite plain that he had no confidence in his case, nor had Perker. And yet there has never, so far as I know, been any reflection upon the course taken by Perker; all the blame is thrown on Dodson and Fogg. The trial was carefully prepared for, every legitimate means of impressing the jury with the merits of the plaintiff's case was thought out. Perker bore witness to the excellent ideas of effect, and admitted "Capital fellows those, Dodson and Fogg." No one can say that all this was not in the direct line of their plain duty to their client. retained the best man they could. It may be that Serieant Snubbin was at the very top of his profession, and that he was said to lead the Court by the nose. He certainly conducted the defence with skill.⁵ "He did the best he could for Mr. Pickwick," but Serjeant Buzfuz was a first class man to entrust with a plaintiff's brief-at-the trial, and his junior, Mr. Skimpkin, also showed capacity as a Nisi Prius The case was fairly fought, there was no sharp practice, the facts detailed by the witness were not disputed, the judge's charge was unexceptionable, the jury was a special jury, Pickwick's own lawyer did not believe in his case, and the result was inevitable.

Of course those who are taken to law for the first time may be allowed to labour under some temporary irritation and anxiety, but Pickwick had had a run for his money; the jury had decided against him as they on their oaths thought right and just, and one might have expected something like sportsmanlike spirit from him. But the childishness which saw in Serjeant Buzfuz's courteous greeting to his brother Snubbin nothing but abhorrent and "cold-blooded" villainy did not desert him; "speechless with indignation"—at what?—he determined not to pay a farthing of damages or

costs.

It is to be observed that this position was taken not by way of protest against an unjust law, as by the "Passive Resisters" in their protest. That would be at least deserving of respect. It was nothing but sheer wrong-headedness. The many amiable and lovable features of Mr. Pickwick's character should not blind us to his pompous self-importance and total disregard of the opinions and

wishes of others, his perfect conviction of his own infallibility, and his intolerance of resistance to his *fiat*.

Of course, the plain duty of Dodson and Fogg was to compel payment of the damages, and it was equally their plain duty to compel payment of their costs by Pickwick. The defendant had no goods exigible under a Fieri Facias, no crops to seize under a Levari Facias, no lands to seize under an Elegit; attachment of debts was not yet allowed by law; nothing remained but to attach the defendant's person. He, of course, must needs talk of them being "vile enough to avail themselves of legal process against" him. What did he suppose they or any other attorneys would do?

There has been much popular condemnation of Dodson and Fogg for imprisoning Pickwick. No one ever complains of the attorneys retained by Lord De la Zouche sending to a debtors' prison at York Castle the Reverend Smirk Mudflint and Barnabas

Bloodsuck, Jr. It all depends upon whose ox is gored.

If any attorney is to be blamed for deceit, it must be Perker. He is said to have told Pickwick that the only way to get Mrs. Bardell from the Fleet was that he should pay "into the hands of these Freeman's Court sharks" the costs of Bardell v. Pickwick, "both of plaintiff and defendant." Of course that was not true. What should be paid to release Mrs. Bardell was the amount of the judgment against her, including costs, and that would be the plaintiff's costs, "Solicitor and Client" in Bardwell v Pickwick with the added costs in Dodson et al. v. Bardell. The defendant's costs in Bardell v. Pickwick could not enter into the calculation at all. If Perker did say anything of the kind, he was dishonestly trying to get his own costs paid; and that, it is probable, no one will charge him with.

Unless there is a mistake, Dodson and Fogg accepted "the taxed costs £133-6-4" in full, and that would be a generous concession. However, they continued to be with Pickwick and Pickwick's admirers "a well-matched pair of mean, rascally, pettifogging robbers." And how many admirers has the inimitable Pickwick, obstinate, wrong-headed, prejudiced, overbearing, inconsiderate Old Fireworks as he was? Because he loved his fellow-men, the real sin of Dodson and Fogg is that they did not.

NOTES.

^{(1).} I find that I have unwittingly plagiarized Samuel Warren, Q. C.(or is it an example of unconscious memory?) in his *Ten Thousand a Year*, a book I have not read for half a century. Warren who himself drew the portrait of Quirk, Gammon and Snap in most unflattering lines, says:

There will probably never be wanting those who will join in abusing and ridiculing attorneys and solicitors. Why? In almost every action at law, or suit in equity,

or proceeding which may, or may not, lead to one, each client conceives a natural dislike for his opponent's attorney or solicitor. If the plaintiff succeeds, he hates the defendant's attorney for putting him (the said plaintiff) to so much expense, and causing him so much vexation and danger; and, when he comes to settle with his own attorney, there is not a little heart-burning in looking at his bill of costs, however reasonable. If the plaintiff fails, of course it is through the ignorance and unskilfulness of his attorney or solicitor, and he hates almost equally his own and his opponent's attorney!—Precisely so is it with a successful or unsuccessful defendant. In fact, an attorney or solicitor is almost always obliged to be acting adversely to some one of whom he at once makes an enemy; for an attorney's weapons must necessarily be pointed almost invariably at our pockets! He is necessarily, also, called into action in cases when all the worst passions of our nature—our hatred and revenge, and our self-interest—are set in motion.

(2). This letter was not produced, and we cannot say what was its precise language, —probably Perker paraphrased it—no such phraseology was within the powers intellectual or literary of Martha Bardell. She never got higher than "do these things on speculation." The same terminology is used by her friend Mrs. Cluppins, which Sam Weller transforms into "does these sorts of things on spec." We must take Perker's word for it that this letter was brought to his office before he "held any communication with Mrs. Bardell": but one would like to know how the letter came to be written at all. Perhaps Mr. Lowten could have given some clue.

No court would think of accepting Perker's version of the contents of this letter, and no valid reason is given for its non-production even to Pickwick.

- (3). If the treatment by "old Fogg" of the defendant Ramsey in the action Buttman v. Ramsey is truly reported, it was a scoundrelly dishonest action—but was it not a "guy" by Mr. Weeks intended to gull the visitors and quite understood by the other three clerks? Everyone knows the story of Frank Lockwood, horrifying Bench and Bar in the United States by telling of his taking the "best alibi that was offered."
 - (4). In re Stretton (1845) 14 Meeson & Welsby's Reports, 806.
- (5). I am permitted to copy here some remarks written by one of our Supreme Court Judges who had, when at the Bar, a very large counsel practice:—

I have no sympathy with the current notion that Sergeant Snubbin was hopelessly outclassed by Buzfuz, great Counsel as Buzfuz was; I have carried too many Briefs for the Defendant not to appreciate Snubbin's position; he had to sit and watch for holes in the plaintiff's case, to admit what he knew could be proved (thereby diminishing the effect on the jury), to avoid pitfalls, to let well enough and ill enough alone—see what happened to his junior, the unhappy Phunky; of course, he was "a very young man...only called the other day...not been at the Bar eight years yet" when he did not sit down when Sergeant Snubbin winked at him but continued to cross-examine the too-willing Winkle. It had been determined in advance not to call witnesses for the defence, and it is hard to see what the Sergeant could have done which he did not do. Crede experto the lot of defendant's counsel in such cases is not a happy one.

It is incomprehensible by me how barristers at least, whatever may be said of laymen, can look upon Serjeant Buzfuz as a burlesque. His name is no doubt intended for humour—perhaps Serjeant John Bernard Bosanquet who was made a judge just before the trial of Bardell v. Pickwick is hinted at, as Mr. Justice Gazelee gave the suggestion for the name of the Judge.

But his address, his marshalling of evidence, his examination of witnesses and his general conduct of the case for the plaintiff are just such as was to be expected from an able and experienced counsel, and nothing could be less farcical. Of course in the public mind a suit for "breach" is always amusing, and counsel for the defendant plays on that popular idea; but counsel for the plaintiff combats it and never exhibits the slightest levity. He is more than usually stern and ceremonious.

Dickens's report is admirable, and no barrister can fail to appreciate the faithfulness of his description or the skill and acumen of the counsel portrayed.

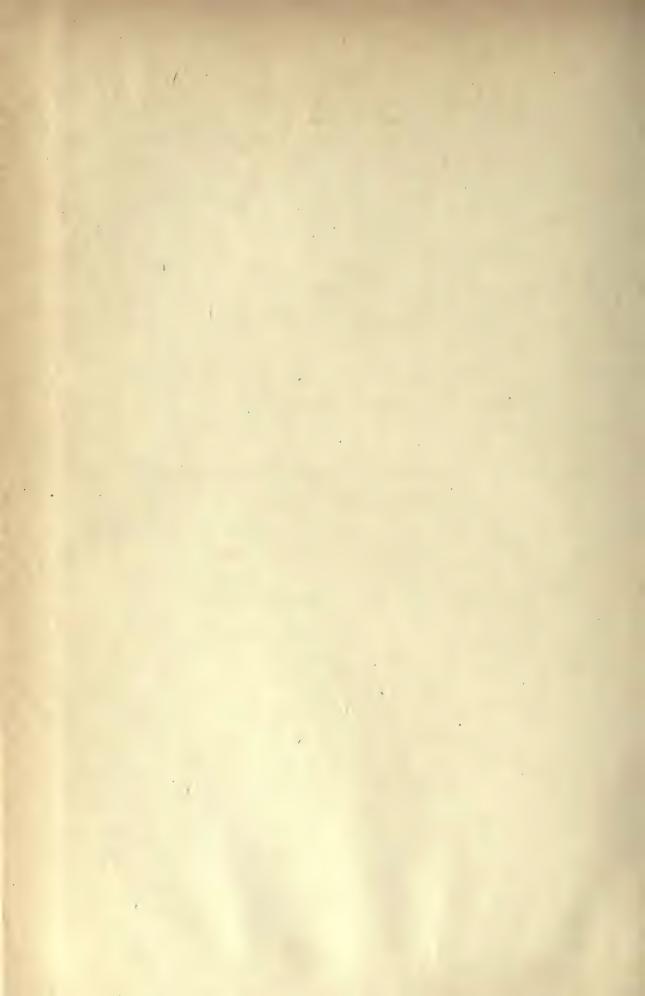


WILLIAM FIRTH

THE THIRD ATTORNEY-GENERAL OF UPPER CANADA, 1807-1811

BY

THE HONOURABLE MR. JUSTICE RIDDELL



WILLIAM FIRTH

The Third Attorney-General of Upper Canada, 1807-1811.

BY THE HONOURABLE MR. JUSTICE RIDDELL.

When in August, 1806, Thomas Scott, the second Attorney-General of the Province of Upper Canada. became Chief Justice, D'Arcy Boulton was Solicitor-General: having succeeded Gray in office in 1805, he was given charge of the duties of Attorney-General until a successor to Scott should arrive. But as yet it was not thought wise to appoint "Colonials" to the high office of Attorney-General; moreover, Boulton although he was an Englishman had not been called to the Bar in England but had been given a licence to practise law under the provisions of the Act of 1803. Francis Gore, the Lieutenant-Governor, urged the appointment of an Attorney-General and instructions for him to come to the seat of Government without delay, as there was a necessity for a legal adviser to whom to apply where it would be improper to apply to the Judges. But he was forced to wait until the Secretary of State should select the proper man.

At length in March, 1807, William Firth, an English barrister, received the appointment, then considered of great value;² but it turned out a bitter

² The salary and the other emoluments of the Attorney-General in the year 1807 are given in an official despatch from Lieutenant-

^{1 (1803), 43} Geo. III. c. 3 (U.C.), which empowered the Lieutenant-Governor to authorize not more than six British subjects "to practice the profession of law in the Province." In fact only five were so authorized, Dr. William Warren Baldwin of York, William Dickson of Niagara (who killed William Weekes in a duel at Fort Niagara, October, 1806), D'Arcy Boulton of Augusta, John Powell of York and William Elliott of Sandwich. See my "Legal Profession in Upper Canada," Toronto, 1916. pp. 15, 31. Gore's request is to be found in his letter to Windham from York, November 20, 1806, Can. Arch. Q. 305, p. 69. It should be said of Boulton that there is no record of his requesting to be appointed Attorney-General—almost the only instance in his times of any officer not personally urging his own advancement: he did apply for the whole and receive a part of the salary, etc., of the Attorney-General from the resignation of Scott till the arrival of Firth. Can. Arch. Q. 311, p. 414.

disappointment to him. He never ceased to lament his fatal acceptance of the post.

Firth was the only son of William Firth, of the ancient city of Norwich; he was educated at Trinity Hall, Cambridge, "a Civil Law College;" he devoted himself to the study of Civil Law, and attended the University lectures of the Civil Law Professor; he was admitted to Lincoln's Inn, November 16, 1792, and was called to the Bar in Michaelmas Term, 1787. As he himself says, he "pursued a studious path thro" ye crabbed lore of Westminster Hall;" and it is apparent that he prided himself on his knowledge of "Black-letter law."

After his call he joined the Norfolk Circuit but

Governor Francis Gore to Castlereagh, from York, April 4, 1805. Can. Arch. 311, I, 132 (the amounts are in Halifax currency, worth 9/10 of sterling).

	£	S	d
Salary	333	6	8
Office rent and Clerk	110	0	0
Travelling expenses on Circuit	55	11	1
For miscellaneous services behalf of the Crown			
Fees on Patents	- 259	8	2
	£1,045	17	7
Private practice about			
	-	_	-
(Halifax currency)	£1.445	17	7
(a little over \$6,000 of our money.)	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		

(a little over \$6,000 of our money.)

Gore adds, "The Attorney-General usually goes two circuits, which is at least £150 in addition to what is above stated"—perhaps the £150 might balance the expenses, making the net income some-

thing over \$6,000, a very handsome revenue at the time.

³ His education appears from his own letters, e.g., in a letter to Liverpool, Secretary of State, from York, April 10, 1810, Can. Arch. Q. 313, 2, 527, he says: "I have had the education of a Scholar and a Gentleman, having been brought up in an English University and through the legitimate medium of an English Inn of Court." In his letter to Castlereagh from York. April 4, 1808, Can. Arch. Q. 311, p. 133, applying for the Chief Justiceship of Lower Canada (or if C. J. Scott should receive that appointment, the Chief Justiceship of Upper Canada), he says: "I should, I presume, find some advantage from having attended a Civil Law College (Trinity Hall, Cambridge), when besides attending ye Civil Law professor's Lectures, our attention was by ye College Statute particularly directed to this branch of science in our College lectures, ye Professor Jowett being Tutor of that College." Joseph Jowett was fellow and tutor of Trinity Hall, 1775, and professor of Civil Law at Cambridge, 1782, 30 D. N. B. 215.

I owe the date of his admission and call to a courteous answer to my enquiry by the Treasurer of Lincoln's Inn. July 1, 1919.

⁴ The language is found in the letter first mentioned in Note (3).

achieved no extensive practice although the Leaders of the Circuit had a good opinion of his learning and abilities. He retired from his Inn, but he kept up a sedulous attendance on the Courts at Westminster Hall, and settled as a Provincial Counsel in his native city. A prophet rarely has honour in his own country but Firth was an exception; he was made Lieutenant-Colonel of the Norwich Regiment of volunteers, and for some years held the honourable position of Steward of the City of Norwich, a judicial position which had been dignified by the great names of Hale, Spelman and Coke; in his court he held plea of all criminal cases not capital and of all civil cases without restriction of value or cause of action.

Although (or perhaps because) he had not a large practice he seems to have been a close student rather than a man of affairs. He loved his profession, and his library was large if his income was not. His friend, the well-known William Windham, came to his assistance. He was of an old Norfolk family, and had represented Norwich in the House of Commons.⁵ It is not quite certain, but is very probable, that Firth and Windham were related; however that may be, Windham interested himself in Firth and became his patron. Windham was from February, 1806, until March, 1807, Secretary of State for War and Colonies. being succeeded in that position by Castlereagh (Windham, however, continued in charge of the Department for some time). Being notified of the vacancy of the Attorney-Generalship in Upper Canada he appointed Firth to the position and entrusted him with certain despatches to Gore.6 He arrived with

⁶ His conduct in opposing the Peace with Napoleon, whom he heartily hated and wholly distrusted, cost him his Norwich seat in June, 1802, but he was elected for St. Mawes, in Cornwall, for which he sat till November, 1806, when he was elected for New Romney, and in the same month for Norwich again. He was unseated but elected May 8, 1807, for Higham Ferries, which seat he held until his death in 1810.

Windham, writing to Gore, June 19, 1807, says: "Mr. Firth, who has been appointed Attorney-General of the Province under your Government, will have the honour of delivering this despatch." Can. Arch. Q. 306, p. 206. That Firth had no acquaintance with

his wife, two servants, books and luggage at York late in the Fall of 1807, the transit costing him £600, two

years' official salary.7

On arriving at what he calls "this Ultima Thule," he was much disappointed in the place; like all newcomers, then even more than now, he found difficulty in procuring a suitable dwelling, and he was forced to build a house for himself at an expense of £1,750. This was on the north side of Market (now Wellington) street, west of York street and was later occupied by the two Houses of Parliament for a few years after the vandal act of the American Forces in 1813 in burning the original Parliament Building.

Taking up the duties of his high office, he exhibited faults of temper and lack of judgment and of balance. As Gore says, he had "an irritable habit of mind." An Englishman, he had the contempt for the mere Colonial quite too obvious in many of his time and even later; a Barrister of some experience at the English Bar, he belittled the ability, attainments and honesty of his colleagues at the Bar of Upper Canada and included the Bench in his want of respect. He openly and repeatedly boasted of being the only regular Barrister practising in either Upper or Lower Canada, and even pointed out that, with the possible exception of Chief Justice Monk, not one of the Lower Canadian Judges was a regularly trained English lawyer. In the Courts,

Castlereagh appears from his letter to Gore from Elmsley House, York, April 2, 1808, Can. Arch. Q. 311, I. p. 134. "I have not the honour to be personally known to Lord Castlereagh"—he asks for a letter of introduction: he was applying for the Chief Justiceship of Upper Canada or Lower Canada. Can. Arch. Q. 311, p. 133. In the letter mentioned in note 3, Firth says: "For myself I do not consider myself Novus Homo or a mere foundling of Fortune, recollecting that when I was appointed by Mr. Windham to ye Attorney-Generalship of Upper Canada . . ." Firth always claimed that he was "induced to accept the appointment to the Attorney-Generalship of Upper Canada in the assurance that I should succeed in the usual routine to the Chiefships in case any fell vacant": but there is no other evidence of such an assurance.

⁷ See his letter from York, February 6, 1808, Can. Arch. Q. 311, 2, p. 414. Of course his Mandamus had been made out before this time; he applied in this letter for his salary from the appointment of Scott to the Chief Justiceship till the date of his Mandamus. "Gore was allowed £100 for the expense of his removal from the

Bermudas to Canada."

he made an ostentatious exhibition of his Common Law learning and arrogantly lectured the Judges on their ignorance. Cutting remarks on Firth's "Black-letter law" followed, and it was not long before it was known that the Attorney-General was not persona grata in the Court of King's Bench. For a time he got on well with the Lieutenant-Governor, Francis Gore. After his quarrel with Gore he described Gore as

"boisterous and unruly . . . capricious yet violent in his resentment and totally uncontrollable when pursuing the . . . object of his displeasure . . . with restless curiosity to hear tales and know the private history of every individual . . ."

This is scarcely too strong a characterization of the Governor: but he had a real and sincere love of the Province and desire to do his duty. Firth in a moment of irritation applied to the Governor and told him of the manner in which he had been treated by the Bench: Gore was at the time in one of his everrecurring disagreements with Powell. Scott, the Chief Justice, was too lethargic and indifferent to quarrel while the recalcitrant Thorpe had been amoved. Gore sympathized with Firth. In the strongest terms he reprobated "the total imbecility of one Judge (Scott) and the known disaffection and Rebel Yanky principles (I use his words) of the other" (Powell).8 It was deemed advisable to wait until "some flagrant and unequivocal instance of partiality and corruption should occur when he could

⁸ Letter to Castlereagh January 18, 1812, see note 3. My own relationship to Scott—not very distant as Scottish relationships are reckoned—does not prevent me from recognizing the want of vigour and capacity in him: Powell was born in Boston, Massachusetts, before the Revolution, and though he took the Loyalist side was under suspicion as to his loyalty almost till the end of his life—once indeed being directly charged with Treason—there does not seem to have been the slighest ground for the suspicion. Firth is not the only authority for the fact that Gore in some of his many disagreements with his close friend Powell, openly called him "Rebel Judge," "Republican Rascal," "Yanky Scoundrel," "Concealed Traitor," and the like.

act upon irrefragable proof," but no such instance ever became available. Moreover Firth himself soon fell under Gore's displeasure.

Almost on Firth's first appearance in the Province, there was trouble about the fees and allowances to be made to him; £100 had been allowed to Grav, the Solicitor-General (acting as Attorney-General), for a clerk and office rent upon the death of John White but as a temporary measure; this had been continued on the verbal order of the Governor during Scott's time and also after Scott's elevation to the Bench, when Boulton, the Solicitor-General, was acting Attorney-General, but without legal warrant. Firth insisted upon having this allowance. When the charge came before the Board of Audit of the Executive Council it was objected to as it had been by the Inspector-General of Public Accounts: but at length Gore directed that it should be allowed. A number of warrants under the Governor's seal-at-arms which had not passed through the Attorney-General's office because it was supposed that the Great Seal was not required, Firth attempted to charge for, but these were disallowed.9 and there were other matters in the same case. Firth when he heard of the reduction in his fees, did not hesitate in public or in private to charge the members of the Executive Council with a conspiracy to ruin him; so far from crediting them with just or honourable motives he openly ascribed to them those the most corrupt and partial. He went so far as to speak and write in this way to the Governor in official communications. 10 He wrote to Lower Canada as to the practice there; he went to that Province to see the Chief Justice and failing to see him obtained statements from him; and generally he left no stone

³ Special attention should be paid to this, as it was the fons et origo mali of much that followed.

¹⁰ For example, writing to Gore from York, August 11, 1808, Can. Arch. Q. 318, p. 284. Firth says: "They appear to me to have done this at their arbitrary pleasure, subject to no control, allowing no appeal, calling for no explanation, and not even abiding by the Rules they themselves have either laid down or affect to adopt." This is mild compared to his charges in other communications.

unturned to establish his claim; but in vain. Firth spoke of an appeal to the Secretary of State, and the Board of Audit asked to be relieved of passing upon his accounts by reason of his atrocious charges against them. This he considered proof positive of their animus and charged them openly with malice toward him personally.

Apparently it was by reason of the objection to his fees for documents under the Great Seal which did not pass through his office, that Firth wrote to the Governor's Secretary, Halton, his official opinion that all "Great Seals must regularly pass through the Attorney-General's office or they may be voided as improvide emanavit." Halton sent it on to Small, the Clerk of the Executive Council: the Executive Council at its next meeting, April 4, 1811, considered the matter carefully; the Councillors while they asserted that the Great Seal of the Province had not vet been put to any Grant of which the Attorney-General had not furnished the first draft (which had been considered sufficient unless some change was to be required) decided that his claim that a fiat (for which he claimed a fee of £1:16 Sterling) was necessary was too important for them to decide and determined to follow the opinion of Firth; but they asked the Governor to submit it to the Colonial Office for the opinion of the Imperial Law Officers of the Crown. This was done at once and the opinion was adverse to Firth's contention, 11 but advised the established practice to be followed.

But in the meantime events had moved swiftly in Upper Canada. By direction of the Governor, Halton, April 8, notified Firth that instructions had been given to the Secretary not to affix the great seal until he should have received the Fiat of the Attorney-General

¹¹ Letter from Firth to Halton, March 8, 1811, Can. Arch. Q. 314, p. 77. Letter from Halton to Simcoe, March 19, 1811, Can. Arch. Q. 314, p. 80. Minutes of Executive Council, April 4, 1811, Can. Arch. Q. 314, p. 81. Letter Gore to Liverpool, April 4, 1811, Can. Arch. Q. 314, p. 72. Letter Liverpool to Gore, August 10, 1811, Can. Arch. Q. 314, p. 128. Opinion of Sir Vicary Gibb and Sir Thomas Plumer. Lincoln's Inn, August 9, 1811, Can. Arch. Q. 314, p. 238.

and added "during the continuance of such a regulation, it will be requisite that the Attorney-General should receive special permission from the Lieutenant-Governor whenever he may be desirous to be absent from the Seat of Government." Firth does not seem to have appreciated the effect of this apparently innocent statement. But when the Circuits came round he learned too well what it meant. He applied to Gore for leave to go the Eastern Circuit with the Chief Justice. adding that it was not practicable for him to conduct the prosecutions on all the Circuits and that the Lieutenant-Governor would probably deem it expedient to appoint some Barrister to conduct prosecutions for D'Arcy Boulton, the Solicitor-General, during his absence.13 Now was Gore's time for a body blow; he directed his Secretary to write Firth that his request to go Circuit with the Chief Justice was "altogether incompatible with the public service so long as you remain an indispensible party to every act of government requiring the Great Seal;" but said the matter would be referred to the Executive Council.14 Firth protested that the first and most important duty of the Attorney-General was to conduct prosecutions against criminal offenders and that Instruments under the Great Seal could generally wait as the delay of a few months was not of the least consequence. He added the very important statement "The Circuits constitute now at least three-fourths of the emoluments of my appointment." In vain — the Executive Council reported that the claims to be a party to every "Great Seal" and to go on Circuit were incompatible and they could not advise the Governor to accede to both. They went further and reported that

¹² Letter Halton to Firth, April 8, 1811, Can. Arch. Q. 314, p. 101.

¹³ Letter Firth to Halton. July 6. 1811, Can. Arch. Q. 314, p. 103. Boulton had sailed to England and had been taken prisoner by a French Privateer; he remained three years in a French prison, returning to Canada in 1814.

¹⁴ Letter Halton to Firth, July 7, 1811 Can. Arch. Q. 314, p. 105.
¹⁵ Letter Firth to Halton, July 8, 1811, Can. Arch. Q. 314, p. 107.

"under actual circumstances there is no need for an Attorney-General or Solicitor-General or a substitute for either to attend the Assizes unless matters especially regarding the King's interests are to be there agitated.¹⁶

Gore relented; although he agreed with the Executive Council he gave Firth leave to proceed on the Circuit as usual, "apprehending that the public may not be at present prepared for the change." And he said he would direct some person to conduct the business in the Western Circuit before Mr. Justice Powell. Firth then asked for "leave to go home to England," adding "In order to obviate any objection to the granting of my request on account of the Solicitor-General's absence (being a prisoner in France). . . I do not intend to return again to this country." Whereupon the telling reply was made, "Your solemn opinion that no instrument under the Great Seal of the Province can legally issue without the Fiat of the Attorney-General having been submitted to His Majesty's Ministers, the Lieutenant-Governor does not think he can with any propriety cancel the order made on that opinion until he receives directions from the Secretary of State"; and it was pointed out that the Lieutenant-Governor's power to appoint an Attorney-General until His Majesty's pleasure was known was limited to the case of a vacancy.18 Firth did not accept or act upon the delicate hint that he should resign, but let it be known indirectly that he would go to England,

¹⁶ Can. Arch. Q. 314, p. 111—the meeting was held July 11, 1811.

¹⁷ Letter Halton to Firth, July 13, 1811, Can. Arch. Q. 314, p. 113.

It may be of interest to mention the sums paid for conducting the Crown business at the Assizes from 1792 to 1797, Can. Arch. Q. 314, p. 115 (the amounts are in sterling).

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1792-£ 8 17.
                 1798-£ 65 15. 6.
                                      1805-£139 1.
                                      1896- 230
 1793- 25 10.
                  1799— 69 15.
                  1800- 60 9.
1794-58 7.
                                      1807- 160 5.
                  1801- 99 8. 8.
                                      1808- 203 1.
1795- 24 15.
                  1802-113 0. 6.
 1796-27
                                      1809- 195 8.
 1797-34 1.
                  1803— 135
                                      1810- 316 4.
                            1.
                  1805-235 8.
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¹⁸ Letter Firth to Holton July 2, 1811, Can. Arch. Q. 314, p. 119. Halton to Firth July 29, 1811, Can. Arch. Q. 314, p. 121.

leave or no leave.¹⁹ He, however, began to hedge and said that all he meant in his former opinion was that regularly the Attorney-General's Fiat was necessary, but that if Great Seals "did not pass in ancient form they were voidable in law, which is a very different thing from that being *ipso facto* illegal;" this called out the obvious and crushing retort from Gore, "It cannot be imagined that any gentleman much less the King's Representative should sanction by his name any Act which he knows from the best legal opinion to be voidable."

Firth did not wait for leave, but being at Cornwall in September, 1811, he wrote to Liverpool complaining of his treatment and left the Province to embark at Quebec with his family, wife and two little daughters.²¹

Leaving him on his way to England, we shall mention some other incidents of his life in Upper Canada.

The abolition of the local Courts of Common Pleas and the institution of one central Court of King's Bench in their stead was displeasing to many in the Province especially in places remote from the Capital. The wretched roads made it an intolerable burden to attend the Court in Term from the ends of the Province. The fate of Mr. Justice Cochran and Solicitor-General Gray gave a vivid example of the dangers of the water ways. The Eastern District particularly complained and at length two members of the House brought the matter squarely up for determination. Mr. Samuel Sherwood, member for Grenville (always somewhat radical and a little later suspected or more than suspected of disaffection), seconded by Mr. Peter Howard, member for Leeds, obtained leave,

²¹ Letter Firth to Liverpool, from Cornwall, September 15, 1811. Can. Arch. 314, p. 249. Letter Gore to Liverpool, York, September 30, 1811, Can. Arch. Q. 314, p. 135.

The opinion of Sir Vicary Gibbs, Attorney-General, and Sir Thomas Plumer. Solicitor-General, Lincoln's Inn, August 9, 1811, Can. Arch. Q. 314, p. 238.

Letter Firth to Holton, July 22, 1811, Can. Arch. Q. 314, p. 116.
 Letter Firth to Halton, July 22, 1811, Can. Arch. Q. 314, p. 123.
 Letter Gore to Liverpool July 29, 1811, Can. Arch. Q. 314, p. 116.
 Gore said that he would appoint an acting Attorney-General if Firth carried out his expressed intention. Can. Arch. Q. 314, p. 116.

February 2, 1808, to introduce a Bill "for establishing a Court of Common Pleas in each and every District of this Province." The Bill was introduced and read the first time on the following day; it had its second reading and went to Committee of the Whole sitting on February 8. On February 8 the motion was voted down by 10 to 2, the only two supporters being David McGregor Rogers, of Hastings and Northumberland, and Thomas Dorland of Lennox and Addington, the Solicitor-General, D'Arcy Boulton, voting with the majority.

Firth, not expecting to have a hearing, on February 6 took the extraordinary course of appealing direct to the Under Secretary of State in Downing Street. He attacked the provisions of the Bill, said it was intended

"to have for Judges herdsmen from the woods (Bubulci Judices) to be selected from a few unlearned (native) Barristers . . . without any but a Yanky education."

His strongest argument, however, was

"I believe it to be the first step to the Province declaring its independency, it being a perfect Republican Bill abolishing the English Law and Practice and substituting a crude, undigested. incongruous mass of error and injustice instead." 222

²² It will be remembered that in 1794, when Hamilton in the Legislative Council opposed Simcoe's scheme for abolishing the Courts of Common Pleas and erecting the Court of King's Bench, Simcoe called him a "Republican." The letter referred to in the text is a P.S. to one of February 6, 1808, by Firth to Edward Cooke, Under-Secretary of State for War and Colonies, Can. Arch. Q. 311, p. 416. It is worth quoting in full, as showing Firth's conception of a perfectly simple Provincial measure.

"P.S. It was intention to have informed you (in the body of my letter) of a Bill which ye House of Assembly are bringing here, and which I think will have a very injurious and evil tendency both with regard to ye rights and prerogatives of ye Crown and ye final welfare of ye King's Subjects of ye Province. It is a Bill to establish a Court of Common Pleas in every District of ye Province, to have a universal Jurisdiction in holding all civil pleas, and ye decision is to be final, without appeal in all Causes (that in 19 out of 20) where ye sum recvd does not exceed £50. The

The Bill pursued the usual course and finally February 11, 1808, passed the third reading by a majority of 12 to 2, Joseph Willcocks, a notorious malcontent and David McGregor Rogers alone voting nay. In the Council the Bill failed to get through Committee of the Whole and no more was heard of it.²³

A little later in the same year, Firth applied to Castlereagh for a Chief Justiceship; Allcock, who had been Chief Justice of Upper Canada, and then Chief Justice at Quebec, died of a "malignant fever;" the custom was to offer the Chief Justiceship at Quebec to the Chief Justice of Upper Canada; and Firth did not wish "to contravene the prior claim of Mr. Scott, Chief Justice of Upper Canada," but asked for that Chief Justiceship which should finally become vacant. He set out with some particularity and a little ostentation his "idoneity" and his claims: and procured a letter of recommendation from Gore with

Judges are to be appointed by ye Lt. Govr. with a suitable salary to be paid by ye Province. The manifest tendency (and that is ye intention in my mind of ye member bringing it in) of ye Bill is to make ye Office of Judges appd. by ye King a mere sinecure place, and to have for Judges Herdsmen from the woods (Bublci Judices) to be selected from a few unlearned (native) Barristers, made so by a Provincial Act, without any but a Yanky Education, I believe it to be ye 1st step to ye Province declarg its independency, it being a perfect Republican Bill, abolishg ye English Law and Practice, and substitutg a crude, indigested, incongruous mass of error and injustice instead.

I yesterday (as Atty. Genl.) petitioned ye House against ye Bill prayg to be heard at ye Bar.

Govr. has desired my opinion on ye Bill which if he follows, will be peremptorily to refuse ye Royal assent—Indeed were it a Bill expedt to be passed, I think it one of so revolutionary a nature, that it is included in ye 14th Clause of his Instructions amg those Acts with he is inhibited give his assent to, till ye King's pleasure be known. W. F.

Addressed to

Cook Esqr Secretary of State's Office Downing St.

²² For proceedings in the House, see 7 Ont. Arch. Rep. (1910), pp. 201, 205, 206, 207, 208, 210, 212, 213: in the Legislative Council, 6 Ont. Arch. Rep. (1909), pp. 307, 311-318.

whom he had not yet fallen out.²⁴ The application was unsuccessful: Scott preferred to remain in Upper Canada,²⁵ and Jonathan Sewell, the Attorney-General, received the Quebec appointment.

In 1810, the Legislature again troubled Firth—this time, however, he had the Solicitor-General on his side. There was much dissatisfaction throughout the Province with the fees allowed Court officers and practitioners by the Judges of the Court of King's Bench under the Act of 1804²⁶—on motion of David McGregor Rogers, the House of Assembly requested the Judges to lay before the House the table of fees

³⁴ Firth's letter to Lord Castlereagh from York, April 4. 1808. Can. Arch. Q. 311, 2, p. 428. Gore's letter to Castlereagh of same date, Can. Arch. Q. 311, 1, p. 133—he says: "Since he came into this Province he has acted as a man of honour and a gentleman and I believe him firmly attached to the Laws and Constitution of England," but Firth's first account for fees had not yet been presented. April 3, 1808, Gore wrote to Cooke, Can. Arch. Q. 311, p. 65—"The Attorney-General is pushing hard to be made a Chief Justice. He had been with me about six months. I believe him to be a very honest and a very capable man. I am no judge of his professional abilities. Should you promote Mr. Firth, Lord Castlereagh has a situation of £1,500 a year to give away. Do not misconceive me: I do not presume to recommend Mr. Firth—I only speak of him as I think he merits."

²⁸ Scott wrote to Gore, March 26, 1808, Can. Arch. Q. 311, 1, 57, that he had heard of Allcock's death, that when he was appointed Attorney-General of Upper Canada he had been told by Under-Secretary King, by direction of the Duke of Portland, that he might expect to succeed to the Chief Justiceship of Upper Canada, and also to the Chief Justiceship of Lower Canada; but although the latter was superior in emolument, he preferred to remain in Upper Canada, as he could not express himself in French with any degree of propriety, he was totally unacquainted with the laws of Lower Canada and was too old to learn. It is about certain that Gore had informed Firth of this determination before Firth's letter to Castlereagh.

²⁶ (1804) 44 Geo. III. c. 3 (U.C.), gave the Court of King's Bench full jurisdiction over fees, "to be taken by any Clerk of the Crown, Council (sic) Attorney, Sheriff, Officer or other person" in respect of business in the King's Bench. The vacancy on the Bench caused by the death of Mr. Justice Cochran induced the Judges to lay over all but pressing matters, and it was not until April 19, 1806, after the arrival of Mr. Justice Thorpe, that Powell and he passed a Regula Generalis on the subject—it reads thus:

"It is ordered that in future the quantum of costs on all proceedings in the Court be governed by the rule of allowance in Westminster Hall, and that the practice of this said Court do conform in all possible respects to that laid down in Tidd and Sellon." See Term Book, Easter Term, 46 Geo. III., April 19, 1806.

fixed under the Statute: February 26, they complied with this request and it appeared that the same fees were allowed in Upper Canada as in England, in York as in Westminster. Thereupon a Bill was introduced fixing the fees to be taken in the King's Bench and was finally passed unanimously, March 6, on which day it was sent up to the Legislative Council: returned without amendment, March 8, it was assented to March 12, and became law.²⁷ This reintroduced the fee bill laid down in 1794 in the Statute creating the Court of King's Bench.

One would have thought the Act innocent enough, but the Law Officers of the Crown at York took alarm.

They joined in a solemn protest to the Privy Council against the Statute as

"by totally extinguishing the jurisdiction of the Court . . . as to the regulation of professional fees of its own Court it thereby materially lowers its dignity and lessens the respectability of the Bar by making it completely subject to the casual and disorderly mandates of a popular Assembly."

Complaining of the reduction of the costs

"it is our clear and candid opinion that the regulation . . . owes its rise to an insidious spirit of republicanism which seeks to reduce all orders of men to a level and to put the man of Science on a footing with the labourer—a spirit which the inhabitants of the colony from their perpetual intercourse and connection with a neighbouring country are but too apt to imbibe . . . the Bill in question is one . . . materially encroaching on the just prerogatives of the King by lessening and restricting the power and authority of the Judges of this Court . . . many minor objections exist which might be

²⁷ (1810) 50 Geo. III. c. 2 (U.C.), repeating the Act of 1804 and reinstating the fees prescribed by the original jurisdiction Act of 1794. The proceedings in the House will be found in 8 Ont. Arch. Rep. (1911) pp. 323-4: 332, 339, 340, 353-4, 356-7; in the Council in 6 Ont. Arch. Rep. (1909).

urged to demonstrate the inexpediency, crudeness, injustice and total inefficiency of the Act but . . . a paramount and decisive objection to the Act is that it appears to us to be a species of innovation (borrowed from the popular institutions of a neighbouring state) directly levelling the King's Prerogative curtailing the power, authority and rightful jurisdiction of the Supreme Court . . . by vesting a capricious control over the King's Supreme Court in a fluctuating body to marshal out according to the capricious whim of the moment the precise compensation for professional fees for services of which they must be ignorant of the labour and extent of—in truth leaving such prescribed jurisdiction uncontrollably in the partial hands of the suitors themselves."

All this was terrible enough; but worse things must be said of the infamous Bill.

"We are also of opinion that the prescribed allowance of Ten Shillings on each Brief of Counsel instead of being quiddam honorarium to a Barrister is a reproach to the bestower but more a dishonour to the Receiver and in whatever light considered is insulting and repugnant to the feelings of any professional gentleman who has had the education of a scholar and a lawyer or passed thro the Academic Walks of an English University or Inns of Court as introductory to the severe studies of Westminster Hall."

Videlicet William Firth-

The Judges came in for rebuke for not advising the Lieutenant-Governor to reserve the Bill for the Royal pleasure. And this precious stuff was signed officially by Attorney-General and Solicitor-General²⁸ and sent

²⁸ This protest is to be found in the Canadian Archives Q. 313, 2, pp. 555. The Act of 1794 made a Table of Fees, one item being "Fee with Brief in matters under £30, 10s. (His Majesty's Attorney-General to receive one-third more). SS. 37, 38. In England a barrister cannot sue for fees, fees being quiddam honorarium; in this Province he always could sue for the fees prescribed by Statute. Baldwin v. Montgomery (1843) 1 U. C. C. R. 283; cf. McDougall v. Campbell (1877), 41 U. C. R. 322; 14 C. L. J. 213; Armour v. Kilmer, 28 O. R. 618.

by Firth to Lord Liverpool, Lord Eldon (the Lord Chancellor) and Lord Ellenborough (the Lord Chief Justice). He was not satisfied with this; in a private letter to the Secretary of State he earnestly requests him to read the "formal and decided opinion of the Solicitor-General and" himself, that he might see the "danger justly to be apprehended from such vulgar republican innovations . . . the King's Prerogative . . . manifestly shaken . . . the Act so pregnant with evil and mischief to the Kingly Government.29 Affecting to be upholding the dignity of the Court he cannot refrain from attacking the judges for approving such an Act, "I should hope the first instance of any of the King's Supreme Court voluntarily resigning up its own authority and jurisdiction." And all in vain.

In the same year occurred a famous proceeding at law which excited Firth's ire against the Judges—the story has never before, so far as I know, been told consecutively. In 1795 the Legislature provided a "Register Office" for each County and Riding and the appointment of a "Register"—the word "Register" is comparatively new³⁰—a person of "sufficient inte-

²⁹ Private letter Firth to Liverpool, York, May 7, 1810, Can. Arch. Q. 318, 2, p. 527: the formal opinion seems to be dated July 20, 1810, but the true date is probably March 20, 1810, the obnoxious Statute having been assented to March 12, 1810.

³⁰ See Vesey, "Decline of the English Language," p. 82, 1841, Registrar is a "novelty—recently, within the memory of persons now living introduced"—Murray, New English Dictionary sub voc "Registrar."

The word "Register" was used of the Clerk of the Vice Admiralty Court, and of the Clerk of the Prerogative Court at Quebec; the Quebec Ordinance of March 9, 1780, 20 George III. c. 3, gives the fees payable to the "Register" of the Vice Admiralty and

to the "Register" of the Prerogative Court."

When the registration of deeds, etc., was provided for in the new Province of Quebec by the Ordinance of November 6, 1764, the documents were to be left with the "Register or Deputy Register": and when (as has been said) in Upper Canada the Statute of 1795, 35 George III. c. 5, was passed for the same purpose, "Register Offices" were established and "Registers" were provided for to attend to the duty of registering. It was in 1829 (I think) that the "Registrar" was first heard of—10 Geo. IV. c. 8—certainly the Act of 1818, 58 Geo. III. c. 8, speaks of the "Register or his Deputy," and the Act of 1828, 9 Geo. IV. of "The Register."

When in 1793 by the Upper Canada Act, 33 Geo. III. c. 8, a

grity and ability" to each office with a provision for filling any vacancy "by death, forfeiture, or surrender" of a Register and for forfeiture of office for neglect or fraud.31 There was no provision for forfeiture for any other cause. David McGregor Rogers, a Member of the House of Assembly, was appointed Register for Northumberland and Durham at Cobourg (Hamilton, as it was then called). In the Session of 1808. Rogers with two other members of the House, generally acted with Willcocks, a notorious malcontent, and formed a kind of opposition. Willcocks was gaoled by the House for a libel, and the other three continued in factious opposition; at length, March 5, 1808, they left the House without leave when the Speaker was about to put the School Bill to the third reading, and so left the House without a Quorum—they openly said that they would not return unless and until the majority should come round to their view and did not appear again that Session. Gore promptly deprived Willcocks of his Shrievalty and appointed Thomas Ward to succeed Rogers. Rogers refused to vacate his office or to give up the books to Ward, and Firth moved the Court of King's Bench for a mandamus to compel him to do so. He had every right to such a writ if the wording of Rogers' commission was right-it read "during pleasure," but Rogers contended that this was an illegal and inoperative term not justified by the Statute. The Court, Scott, C.J., and Powell, J., ordered a mandamus nisi to issue, but after elaborate argument on two occasions by both Law Officers of the Crown and Rogers in person, the same Court held that a peremptory mandamus should not issue. 32

Court of Probate was erected to take the place of the former Prerogative Court, the officer appointed was a "Register," and it was not till long after that he became a "Registrar." See 38 Can. Law T. (May, 1918), pp. 292, 293.

³¹ (1795) 35 Geo. III. c. 5, ss. 1, 3, 10 (U.C.)—this remained unrepealed until 1846, 9 Vic. c. 34, s. 1 (Can.).

³² Mandamus Nisi, November 18, 1808, First argument and Enlargement till next Term, January 4, 1809. Second Argument July 10, 1809. Judgment, July 15, 1809. See the K. B. Term Books.

Firth and Boulton both expressed their anger and indignation at the decision, and Gore was wholly justified in saying of them that they had been taking very improper means to injure the reputation of the judges in public opinion.³³ Firth wrote officially to Liverpool setting out the arguments he and Boulton had advanced, hoped that the injurious decision would be reversed as it was clearly against law, for affairs were not going on in the Province for the advancement of the King's honour or interest or "to the comfort and substantial benefit of true born Englishmen," etc., etc.³⁴

Gore asked the Secretary of State to obtain the opinion of the Imperial Law Officers; he did so, and they agreed with the Colonial Court.³⁵

Another matter gave Firth a reputation for grasping at fees—he refused to allow anyone to lay a Bill before a Grand Jury without his sanction, and demanded a fee of two guineas for putting his name on the Bill. This was brought to the attention of Mr. Justice Powell by David McGregor Rogers at the Spring Assizes at Newcastle (on Presqu'isle, near the present Brighton), the District Town of the District of Newcastle; Powell consulted the Chief Justice and with his approval complained to the Governor—recommending a new system upon which our present County Crown Attorney system to some extent was founded.³⁶ Before any change could be made, Firth was across the ocean; and the proposed reform was forgotten.

²² Gore to Liverpool, September 25, 1810, Can. Arch. Q. 313. 2, pp. 498, 499.

³⁴ Firth to Liverpool, May 7, 1810, Can. Arch. Q. 331, 2, p. 527. ³⁵ The opinion of Sir Vicary Gibbs, Attorney-General and Sir Thomas Plumer, Solicitor-General, given from Lincoln's Inn, March 15, 1810, will be found, Can. Arch. Q. 313, 2, p. 518.

³⁶ Powell's letter to Gore, York, March 6, 1811, Can. Arch. Q. 316, p. 123, enclosed in Gore's letter to Liverpool, April 11, 1812, Can. Arch. Q. 316, p. 93, Firth acted in accordance with the Canadian practice, not with the English practice; and he certainly had less than justice from Governor or Bench. The Fort George trouble is spoken of in several of his letters written in England upon his return.

On one occasion at least the Governor acted most arbitrarily with the Attorney-General; in the summer of 1810 he had arranged to go the Eastern Circuit where there was a greater pressure of business than usual—seven informations for smuggling, two against Justices of the Peace for illegal performance of the marriage ceremony, indictments against coiners, burglary, larcenies of the King's stores, etc., the Crown Business being many times that on the Western Circuit, where were only three criminal charges in all: moreover Firth had left many remanets the previous Assize and was retained in the chief of the new causes, while he had not a single brief on the Western Circuit—his claim to select his own circuit as a matter of right was properly disallowed, but the peremptory order to take the Western Circuit was inexcusable. Firth rightly complained that this was taking away the daily bread of himself and his innocent family.37

Firth complained also that General Isaac Brock by General Order expressed his belief in the innocence of Dr. Lee, an Army Surgeon, who had been accused at Fort George by a woman of the murder of an infant. Firth thought that the investigation by the civil authorities including himself was thereby improperly interfered with—the whole matter is obscure and is not worth extended investigation.

The die was cast. Firth had finally shaken the dust of Canada, that "barbarous country," off his feet and gone to England for justice. Some of his household goods had been disposed of in the summer by private sale.³⁸ But much of his household effects and

³⁷ See his protest to Gore, York, August 16, 1810, Can. Arch. Q. 318, 1, p. 288.

^{**}There are several references to Firth in the Ridout Papers, which may here be transcribed. The sale of his household goods is referred to in the first extract.

In a letter from Thomas Ridout to his son, dated York, U.C.. July 31, 1811, it is said: "Mr. Firth is about to return to England with his family. He applied to the Governor for leave of absence, but as he did not obtain it, he had it seems made up his mind to surrender his appointment, and a sale of all his effects is to commence on the 12th proximo."

Thomas G. Ridout, the son, thinks "Mr. Firth will repent

his fine library were left behind as well as his real estate. These he placed in the hands of Dr. William Warren Baldwin, Treasurer of the Law Society of Upper Canada, to pay his many and pressing debts. Baldwin advertised the library and household goods early in 1812 and succeeded in disposing of most³⁹—the real estate was not realized on for several years.⁴⁰

leaving Canada, where, if he had remained a few months longer, the Governor would have left him without a master," and he is "very much surprised at Mr. Firth's coming to England from such an appointment."

Firth is said, in a letter dated at York, September 11, 1811, to be going "away from here in a day or two . . . for Quebec"; and in another, October 19, 1811, to have gone, leaving vacant the office of Attorney-General, but "John McDonald is appointed Attorney-General for the time being, in the room of Mr. Firth." By December 18, Firth is in England and Thomas G. Ridout says: "In what a foolish manner did he leave you when his enemy the Governor, whom he wished to avoid, cleared out about the same time."

He "was completely dismissed from all employment under the Government—entirely from his own representation of the Governor's conduct, in which he called the Governor villain, tyrant, rascal, hound, etc.,"—without the Governor interfering in the least, (That is how the Governor (Gore) told the story, at least.)

By May, 1812, "Mr. Firth is . . . practising in his native town of Norwich. The mayor and corporation must have been delighted at the return of so amiable a man." I fear that this part of Thomas G. Ridout's letter is "wrote sarkastik": many praised Firth's learning, none his amiability.

³⁹ In the York Gazette, Wednesday, 15, 1812 — (see Robertson's "Landmarks of Toronto, vol. 3, p. 281)—the goods were to be sold by private sale at Firth's house every Saturday during the sitting of the Provincial Legislature from 11 to 3. The library was an "Elegant and Extensive Collection of Books," and offered "ample gratification to his Historian, the Politician, the Divine, the Poet, the Lawyer, the Merchant, and the Novelist; there is also a rich collection of all the most celebrated Greek and Latin Classics"—all books left unsold were to be sent to Lower Canada in the spring.

⁴⁰ Firth says that he built a house at an expense of £1,750, and that this, June, 1816, was "now occupied by the Government as the Parliament House for the two Legislative Bodies." (Letter to Earl Bathurst, from Norwich, June 19, 1816, Can. Arch. Q. 321, p. 102), and he fears a removal of the Capital to Kingston then in contemplation, resulting in a loss of £1,200. It is known that after the destruction by fire of the first Parliament Buildings by the American Troops in 1813, the first Session, that of 1814, was held in Jordan's Hotel, King Street East, and the following three or four in a house at the north-west corner of Market (now Wellington) and York Streets. This was on lot 9 on the north side of Market Street, which had been granted to Hon. Robert Hamilton; and

Firth took with him his whole family, now consisting of his wife and two infant daughters.41

While he did not intend to return to Canada except, perhaps, in triumph, he was greatly incensed at Gore appointing John Macdonell as Acting Attorney-General, "an inexperienced youth fresh from the desk of an Upper Canada Attorney . . . to fill the high

Robertson ("Landmarks of Toronto," vol. 3, p. 318) says the building was "a roughcast commodious cottage on the north-east (a misprint for north-west, see Robertson's "Landmarks of Toronto," p. 94), corner of Wellington and York Streets." He says also that the building was erected by the Honourable Robert Hamilton (1806), Robertson's "Landmarks of Toronto," p. 94—apparently a mistake. Chief Justice Draper occupied the dwelling, 1840-1855; it is now No. 116 Wellington Street. Hon. George Markland was living there in 1820. The matter is not of sufficient importance to examine minutely: it may be said, however, that this lot was said to be occupied in 1807 by the "Estate of Mr. Justice Cochrane," ("Landmarks of Toronto," vol. 5, p. 551), and nothing is more likely than that Firth took over the property from the Judge's estate. What land he owned he bought at \$100 per acre and upwards (Can. Arch. Q. 313, 2, 527). Firth himself in 1807 is entered as the occupant of five lots on Simcoe Place, which was bounded by Graves (now Simcoe), Market (now Wellington) and John Streets-the old Parliament Buildings Square, also of six lots on Russell Square, the old Upper Canada College Square ("Landmarks," etc., vol. 5).

⁴¹ Mrs. Firth's maiden name was Anne—she is said to have been a handsome and imposing woman—it, perhaps, would be well to take cum grano salis the statement in the York Gazette of December 23, 1807, where, speaking of the York Assembly, the reporter says: "We understand that Mrs. Firth, the amiable Lady of the Attorney-General, lately arrived, was a distinguished figure," "Landmarks, etc.," vol. 6, p. 351; Scadding's "Toronto of Old," p. 336; but there are many hints in contemporary private letters complimentary to her appearance and manner.

The daughters were Lucy Rosalind Proctor, baptized at St. Mark's Church, Niagara (then the Murray Bay for York Society), June 18, 1809 (Ont. Hist. Soc. Trans. vol. 3, p. 26), and Euphrosyne Helen, baptized at St. James, York, November 25, 1810 ("Landmarks, etc." (vol. 3, p. 379).

In his extraordinary petition to the House of Commons. June 24, 1816 (mentioned later in the text), he says that Gore for the "mere purpose of discomfort and annoyance" to him, denied him "the assistance and service of private soldiers from the Garrison at a time when no other servants were to be procured . . . and that your Petitioner was thereby for a considerable length of time reduced to the necessity of performing all the Drudgery and menial offices of the House without any the least assistance, except that insufficient help which a wife with the care of two infant children in Arms could casually afford." Can. Arch. Q. 321, p. 142.

I have not found that he had any other children, but have not made exhaustive inquiry.

position of Attorney-General of a British Province,⁴² but was himself notified not to return to Canada.⁴³

He had gone back to Norwich, where he practised as a local Counsel; he petitioned the House of Commons and deluged the Secretary of State with complaints of his treatment by Gore, who was "unreasonable and unjust," "boisterous and unruly . . . capricious yet violent in his resentment," who "may talk of his loyalty, but it is ill proved by trampling on the English and putting down the King's friends," in his "steady and uniform persecution of the English," "uncommonly severe and coercive," with a "systematic establishment of spies." "violating the sanctity of the Post Office:" in the Executive Council and Board of Audit who "like the arbitrary tribunal of Rhadamanthus described by the poet, habet durissima regna castigatque dolos, subigitque fateri," who act only "on their own wayward will, casual caprice and arbitrary view," and to whom he certainly does "impute bad motives" in their "unjust and violent acts," their "inward motives and secret springs of action." Chief Justice Scott, who now suspends or allows fees without any cause than that of "Sic volo. hoc jubeo, sit pro ratione voluntas," dealing with "open and unveiled partiality" against him "whatever side he was engaged on," and betraying the King's prerogative; Mr. Justice Powell with all the Chief Justice's faults, "horresco referens, deciding against the Crown," "an avowed contemner of our jurisprudence, a despiser of learning and all ancient and venerable institutions, a public mocker on the Bench of what he terms in scorn 'the Blackletter nonsense of Westminster Hall," " the Inspector-General McGill "continuing and suspending fees ad libitum;"

⁴² Letter Firth to Robert Peel, Norwich, April 24, 1812, Can. Arch. Q. 316, p. 155.

⁴³ See draft letter to Gore, Downing Street, April 13, 1812, Can. Arch. Q. 316, p. 136. Macdonell's appointment was confirmed and Gore's action approved of—Can. Arch. Q. 316, pp. 136-143. Firth received half pay for the time after the appointment of Macdonell, September 28, 1811, until he received formal notice of his dismissal, April, 1812.

while he, the "Englishman," "Westminster Hall man, gentleman and scholar," the "true born Englishman" with the "education of a scholar and a gentleman . . . brought up in an English University and . . . an English Inn of Court, no novus homo or mere foundling of fortune," but with "probity and true English worth:" the "faithful officer of the Crown," "a man of liberal education . . . leaving friends and so blessed a country for this barbarous land," "a good lawyer . . . of firm, steady, intrepid, vigorous character." who would at the cost of his life "defend the English Constitution free and inviolate of all American principles of innovation and popular encroachment." "devoted to the honour and welfare of his country," after "twelve years sedulous application to" law, and "five years devotion to the service of my Sovereign and the State and the faithful performance of the duties of my office" was "sacrificed (I swear by the Great God) purely to my loyalty and fidelity to my Sovereign," "because I served my Sovereign with truth, honour and fidelity," by "these and their unworthy hirelings pursued to ruin," "visited with all sorts of oppression and persecution," "every possible indignity," "every annoyance which could be devised or practised," "stigmatised with being an opposer of the Government on account of the conscientious and faithful discharge of his public duty as Attorney-General, and his private duty as a man and a Christian," while "even His Majesty's interests have been sacrificed.44

⁴⁴ For all this, and more of the same kind, see Can. Arch. Q. 313, 2, p. 527; Q. 316, p. 52; Q. 321. pp. 102, 142, 176, 214. The description of the vale of Rhadamanthus is of course taken from Vergil. Aeneid. Bk. 6, vv. 566, 567.

Vergil. Aeneid, Bk. 6, vv. 566, 567.

"This harshest of rules holds the Gnosian Rhadamanthus and he tries and punishes frauds, he subjects the accused to the rack."

The crime of C. J. Scott is that of the Roman lady who sent her slave to the cross—when expostulated with that the man had not been convicted of crime, she said:

[&]quot;O demens, ita servus homo est? Nil fecerit, esto,

Hoc volo, sic jubeo, sit pro ratione voluntas."
"You driveller so a slave is a man is he?"

[&]quot;You driveller, so a slave is a man, is he? He didn't do anything, didn't he? All right, he didn't then—I wish it, that is my order, my wish is reason enough."

See Juvenal, Satires VII., vv. 219-223.

He felt hurt in being left "in the private station of an obscure individual instead of rendering more efficient service in an official station."

When Scott was about to retire from the Chief Justiceship of Upper Canada, Firth asked for the position (or indeed any position); when it was refused him and Powell was made Chief Justice, Firth protested that he had

"by no means personally desired that situation; the truth is, I knew Mr. Powell was coming over and did for months before he arrived with Mr. Scott's resignation in his pocket and backed by Mr. Gore's recommendation; and it was to save the colony from so great a calamity as that which it seems has in an ill omened hour overtaken them, that I offered the sacrifice of myself to restore the colony to its proper tone by the firm and unbiased administration of the Public Justice."

But with Sewell and Monk in Lower Canada and Powell in Upper Canada "the die is now cast as to the administration of Justice in both the Canadas as all the three Chief Justiceships are filled up by Americans!! Excidat illa dies, etc., for . . . I deny that an American born and bred can have the genuine feelings of reverence for our venerable institutions which Englishmen have, nor their sacred regard for our ancient establishment, either in Church or State.⁴⁵

In 1816, he figured in a matter which is of great interest to lawyers: Wyatt, the Surveyor-General, cashiered by Gore, brought an action against Gore for libel, wrongful suspension from office and false representations to the Home Authorities. At the trial to prove the publication of the alleged libel Firth was

⁴⁵ Letter Firth to Bathurst, Norwich, October 8, 1816, Can. Arch. Q. 321. pp. 102, 142. The lament "Excidat illa dies, etc.," is of course Statius' well known verses:

[&]quot;Excidat illa dies aevo, nec postera credant

Saecula " Stat. S.V. 288.

[&]quot;May this day be blotted out of the record of time and may future ages know it not . ." Future ages did know and approve, notwithstanding Attorney-General Firth.

called as a witness to prove the delivery to him by Gore of a pamphlet which had been published containing allegations against Wyatt of a grave character; on objection taken, it was held by Sir Vicary Gibbs, C.J., that as the delivery to the Attorney-General by Gore of the pamphlet was not "for any official purpose, instruction or advice," the evidence was admissible and the act a publication. Gore always resented the conduct of Firth, contending that the pamphlet was, as Firth knew, to obtain his official opinion as to the proper course to pursue,46 and he never forgave him.

He continued to practise in Norwich with no great success; he became a Serjeant-at-law in 1816; and appears from time to time in correspondence between Canadians and those in England.47 He was more

⁴⁶ See the report, Wyatt v. Gore (1816), Holt, N.P., 299, the Reporter (not Chief Justice, but) Francis Ludlow Holt, calls Upper Canada an "Island," p. 301. It is perhaps with reference to this circumstance of Firth giving evidence against him that Gore alludes in his letter to Powell of June 5, 1819, mentioned in note 47, infra.

But Gore quite wrongly and without a tittle of evidence to support his suspicion, always after his quarrel thought that Firth was connected with Thorpe, Wyatt, Willcocks, and all the Governor's other opponents and critics.

"Your friend Firth, I understand, is in great pecuniary dis-. . . sorely does the poor Devil repent his lending him-

self to others." July 10, 1819.

"Your friend Firth has applied to Lord Sidmouth to be made a Commissioner of the Insolvent Court—his conduct has been such as to insure a refusal." October 9, 1820.

"Mr. Amyott tells me Serjt. Firth is at a very low ebb, parted with his chambers, his books, etc., etc., and I could have added long since with his honesty. His friends are applying to Lord Sidmouth to make him a Police Magistrate, and have had the modesty to request of me in case I am refer'd to, to speak favourably of him. I told them I thought I went very far in promising that if I heard of the Government intending to make such an appointment, I would not step forward to stop it, but if referred to, I must speak the truth."

47 We have seen that the Ridout Letters speak of him occasionally: in the correspondence now in the Toronto Reference Library between Gore (in England) and Powell, C.J., his name occasionally

crops up, e.g., Powell, January 5, 1819, writes:

"Your late Attorney-General I really know nothing about-he has been writing a great lot of stuff and at Downing Street he is called a second Thorpe"—while Gore writes, May 10, 1819: "Firth is in distress and returned to Norwich." June 5, 1819, is another letter.

Royalist than the King, more of a Churchman than the Bishop of Norwich, Henry Bathurst, Lord Bathurst's "venerable relative," who saw no danger in allowing Dissenters to be members of Corporations and the like. 48

But he failed of political preferment and finished his life in obscurity.

Firth had a facile pen and an easy and effective style; he was a good classical scholar, his quotations are apt and frequent, his knowledge of law was more than respectable, his loyalty undoubted, but he was a misfit, he was arrogant and oversensitive; he received some wrong, but most of his misfortunes were of his own making, and yet it is but plain justice to this misunderstood and misunderstanding, misrepresented and misrepresenting, unjustly treated and unjustly treating, man, to say that it was not auri sacra fames but res augusta domi, not sordid greed but dire need which drove him to questionable methods of increasing his emolument.

⁴⁸ See Can. Arch. Q. 321, p. 176, and the "Political Creed," do, do p. 321, p. 214; also do, do, p. 142.

WILLIAM RENWICK RIDDELL.

Osgoode Hall, Toronto, April 2, 1923.

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P.S.—Further interesting information is given on page VI.

In the spring the corn land should be cultivated as early as possible. Farmers frequently leave the cultivation of the corn until the last because the corn is the last crop to be planted. Why is this a mistake? To illustrate, wet some clay or clay loam in a dish. Mix it until quite wet and leave it outside to dry. This will usually show cracks extending down from the surface of the soil. The same thing is readily observed in a water hole which has dried up and has not been cultivated. This is what happens in a degree if the soil remains uncultivated in the spring. Through these deep cracks the soil water which has collected from the winter's snows and spring rains evaporates and the reserve supply in the soil is lessened. If the soil be cultivated as early as possible these cracks cannot form and a layer of loose soil is formed on the surface. This acts as a mulch and helps to prevent evaporation. This surface cultivation is continued at intervals until the size of the corn prevents it. At this stage the shade caused by the leaves helps in a large measure to prevent rapid evaporation from the soil.

One further factor aids greatly in conserving the moisture in the soil. This is the presence of organic matter provided by the decay of vegetable substances. This provides humus which greatly increases the capacity of the soil for retention of water. How is vegetable matter added to the soil usually? Most of the pupils should see that the roots of plants and stubble remaining on the field will return a certain quantity to the land. The other sources are farmyard manure and green crops which are ploughed under. Does this give any key to the proper place in crop rotation for planting corn? What cultivated plants leave most root residue in the soil? For this purpose clover roots are most desirable. These penetrate to great depths in the soil and when a good stand of clover is produced, the root portion left in the soil will be considerable. In an ordinary four-year rotation of clover, clover or pasture, corn, and grain, the logical place for the corn seems to be directly following the clover since the greater percentage of humus will likely cause the moisture content to be larger. It may be added, of course, that clover leaves a considerable quantity of nitrogen in the soil as well. This is most necessarv for corn growth.

If the application of farmyard manure is made but once during the rotation, as is usually the case, when should it be given? Its functions are to add plant food to the soil and to increase its water-holding capacity. Which crop in the rotation requires the greatest amount of water during the season and, hence, which one will be most benefited by these applications? The decision will be immediately given in favour of corn. Hence, manure applied with this crop is most effective. The cultivation given corn is also most effective in liberating the plant constituents in the manure for plant use. Therefore, to get the quickest and best returns from it, manure should be applied before this crop.

By such a study we see one of the chief needs of the corn plant and determine the best methods of satisfying this need. The pupil is taught to observe plant structures and to endeavour to interpret them. Moreover, the co-relation of agriculture with other subjects shows him that he must have a broad knowledge if he is to be an intelligent farmer and thus enjoy the work in the highest sense.

An Early Canadian Orthoepist

HON. WILLIAM RENWICK RIDDELL Justice of the Supreme Court, Toronto

IN York, Upper Canada, now our city of Toronto, there appeared in 1833 a modest cloth-bound octavo volume of 104 pages, "A Manual of Orthopy with Numerous Notes upon the Origin and Abuse of Words. Fourth Edition with large Additions and Corrections. York, (Upper Canada). Printed at the Office of the Guardian; Entered at Stationer's Hall, 1833".

The book was issued anonymously, but it is known to be the work of Henry Cook Todd, the father of the late Dr. Alpheus Todd, Librarian of Parliament and author of several valuable works on the Constitution.

The father was a graduate of Oxford and became master of a large private school. With a moderate competency, inherited and acquired, he retired into private life but like too many others, he invested his money in companies which failed. He then became a book-seller with little success, and finally his wife's brother* persuaded him to emigrate to Canada. He made a tour in 1832 of the United States and Canada, an account of which he gave in a book, "Notes on Canada and the United States"; being satisfied with what he saw on this tour, he sent for his family who arrived at York in 1833. He was an accomplished amateur artist with the pencil; some of his drawings were much admired.

Fond of antiquarian reading and philological investigation, he would seclude himself for days at a time even from his own family.

He is described† as a most uncompromising Tory but of a kindly disposition; he would show the greatest kindness even to those he had most anathematized. He died in Toronto at the age of seventy-seven.

^{*}Mr. William P. Patrick of York (Toronto).

[†]By Samuel Thompson in his Reminiscences of a Canadian Pioneer, Toronto, Hunter, Rose & Co., 1884, chapter XXVII, pp. 143-146. Most of the information concerning Todd is derived from this book.

Of the Orthoepy, one edition appeared in London, England, in 1801 Kingsford's Bibliography); the British Museum catalogue shows another in 1832; of the fourth edition, the Toronto Public Library and the Riddell Canadian Library have a copy each.

The paper for the book (as well as its printing and binding) was made in York, Upper Canada, as the author informs us in a note, adding "there is no tax in Canada upon paper, newspapers or advertisements"—he also says, "I have books printed on paper made not only of wood but of straw also".

There is a list of words with the proper pronunciation given along with improper pronunciations which are to be guarded against—at the foot of each page are notes of various kinds, orthographical, etymological, orthoepical, and some intended to convey useful or interesting information—these last often have little or no discoverable relation to the words to which they are appended.

The method of giving the correct pronunciation is much the same as Walker's—"dj" for the sound of "j"; "k" for the hard, and "s" for the soft sound of "c"; "kw" for "qu"; "ew" for long "u", etc. He adopts the Walkerian pronunciation of "tu", i.e., "tshu"—e.g. "nature" he pronounces "na-tshure"; moreover, "verdure" is "verjure". He cannot distinguish final "al" from "el"; "natural" he pronounces "natsh-ur-el", "Needham", "Nede-em". Final "or" he always pronounces "ur", e.g., "navigatur". A combination of what we would consider solecisms is found in "titular" which is pronounced "titsh-yew-lur", "tit-u-lur" being reprobated.

Final "ate" is "et", e.g., "separate" is "sep-ur-et"; similarly "rhubarb" is "roo-burb"; "sirup" or "sirop" ("syrup" is not given) is "sur-rup"; "tacit" is "ta-sit", not "tas-it", why, it is hard to see—the original tacitus, taceo, have the "a" short.

"Mercy" is "mer-se", the first vowel as in "meadow"—"marcy" is vulgar but "murcy" is correct. One is at a loss to know where the author comes to rest between the Scots "maircy" and the Hibernian "murrcy". "Honeycomb" is "hun-ne-koome" as in the days when "gold" was "goold" and "Rome", "room". Todd will not permit the latter, "as well might we say ruman and hume for roman and home". (It is not without interest to note that many of the family of the Homes call themselves Hume).

"Sewer", a drain, is "so-ur"; "obeisance" is "o-be-sanse". "Hearth" is "hurth" to rime with "earth"—as far from our common "harth" as from the Scottish "herrth".

"Onion" he pronounces "on-yun" and will not accept "un-yun" the writer, Onion, is said to pronounce his name "On-i-on' with the accent on the penult, but every one has the right to pronounce his name as he wishes; Mr. Reach was not compelled to cease calling himself "Re-ach" by the humorist asking him to "re-ach me a pe-ach". "Peach" Todd pronounces "peesh", I presume by analogy with the French "pêche" but surely without warrant in usage or authority. It is easy to understand why a classical scholar would pronounce "chart" as "kart"—"Magna Carta" has, I hope, quite driven out "Magna Tcharta"; but it is not so easy to explain why he calls "pan-creas", "pan-krese" (κρέας) or "Idumea", "I-dew-me-a", with the accent on the antepenult (perhaps from Ἰδουμενεύς). "Tor-ka" is the old pronunciation of "Torquay", now called "Tor-kee". "O-re-un" as Todd gives it, with the accent on the first syllable is intolerable—"O-ri-on" accents on the second; "lampblack" we are told has the "p" silent; the "l" must not be sounded in "fault"; this is "fawt", "fault" is vulgar. We know Pope and Swift rhymed "fault" with "thought" and Johnson in 1755 noted that the "1" was generally omitted in conversation. No one but a Scotsman now says "fawt"; but the Scot must grieve over "gollf" for his beloved "go'f", consoling himself for the time with the thought that it is not yet "golluf".

For one who used to chew "slippery-ellum-bark" and resented being forced to say "elm", the most curious of Todd's pronunciations are such as "lek-tew-ur", "lek-tew-ur-ship", "mew-er", "flou-ur", "mi-az-em", etc., for "lecture", "lectureship", "mure", "flour", "miasm", etc.-"nature" as we have seen is made dissyllabic, which increases the wonder that "lecture" is given three syllables. "Adagio" is given four syllables "a-dadg-e-o" notwithstanding that the "i" is here but a sign to oftens the "g" and not a real letter. In the case of words from the French, Todd's practice is not 'uniform—he says "me-moir" and rejects "mem-war"; and "a-ma-tew-ur", rejecting "am-a-tur"—his pronunciation of "amateur" is still in vogue with those who finish a dinner with a "lick-kew-ur" having begun it with a "hor-dover". "Presentiment" he pronounced "pre-san-te-mong" with the accent on the antepenult: "burgeois" was "burdg-wau" (except, of course, in printing when it is "bur-jois").

Many of the pronunciations called corrupt or vulgar by Todd are now accepted: we say "a-gen", "bin", "caviare", "extrordinary", "laundry" "palfrey", etc., where he would say "a-gain", "been" (rhyming with "seen") "kaveer" "extra-ordinary", "lan-dre", "paul-fre", etc. With the exception of "ka-veer" all these are still allowed. The present pronunciation of the first, second, and third, I had driven into my unwilling head more than half a century ago at the same time the first "d" was silenced in "Wednesday". Use has made them familiar and tolerable, but I am still resentful and unconvinced; however, usus norma loquendi. I am reconciled to "venzn" for "venison"—Todd gives "ven-ne-zun" and will have nothing to do with "ven-zun"; we go one better and make a monosyllable out of his trisyllable. Why he says "un-veel" for "unveil", "ung-tshus" for "unctuous", and "E-pra" for "Ypres" is a mystery—the last has had a recrudescence in these days with those who speak of the "Vo-zhay" mountains. For the old pronunciation of "tea", i.e., "tay", he cites Pope's

"Tell, tell your grief; attentive will I stay
Though time is precious and I want some tea."
He does not give the poet's better known lines—

"Here, thou, Great Anna! whom three realms obey, Dost sometimes counsel take, and sometimes tea".

All of us but the clergy, whom it specially concerns, have difficulty in saying "Sim-ony" as we should; remembering Si-mon Magus, we are apt to say "Si-mony". Don't.

By comparing the accent in this book and that, in present use, the recessive tendency of English accent is observable—"placard", "finance", "festive", etc., are now generally accented on the first syllable ("festive" always) but in Todd's time that was not allowed—at least by Todd! He said "en-ve-lope", accenting the last syllable, we "anv-lop", accenting the first; he pronounced "abdicative" with the accent on the antepenult, we accent the first syllable. Old-fashioned people still speak of the orchestra as Byron did, with the second syllable stressed, not the first; but it would be hard to find one who accented "remediless" in the same way.

It is more difficult to account for the pronunciation of "academy" by Todd; he accents the first syllable though he must have known the original " $\grave{a}\kappa a \delta \eta \mu i a$ "; "reverie", with the ultimate accented may be accounted for by its French origin—also "travail", "trav-ale", with the final accent.

The Orthoepist has little patience with those who do not agree with him—they are the mob, the canaille, the vulgar, the low Cockneys, lispers, and letter clippers—when mechanics called "solder", "sodder", instead of "sol-der", they should remember that "workmen ought to accept their pronunciation from scholars and not scholars from workmen"; and he refused to allow his pronunciation to be directed by that of a parish clerk.

He is "down" on the "pure English vulgarism" of the "addenda of 'don't I' in 'I always do, don't I'?" He does not like "by the bye, a phrase originally introduced from Scotland"; and "dissenting clergyman" for "dissenting minister" is wrong—the old form "he's gone dead", he says, is now disused (Todd did not mix with the coloured brethren, evidently). We should not say "no more do I" but "nor do I", for "unless finishing a sentence, more always requires than after it" (the more I think of this, the less I am inclined to agree).

A very curious feature is the derivations given, some of them now approved, but many whimsical "folk-etymology". "Cockney" he derives from the Londoner who in the country heard the cock "neigh"—this is like the boy from "The Ward" who was amused to hear the lambs "bark", and probably equally apocryphal. But anyone is at liberty to accept this etymology instead of the fantastic "cockenay" (cock's egg) which seems to be now the favourite.

(To be continued):

National Service in the Non-English School

FRANCES L. ORMOND Portage la Prairie, Manitoba

HE school is the greatest national factor in the non-English community to-day. This statement has been made times without number and is yet unchallenged. In fact, it has been accepted so readily that few people have realized the tremendous burden placed on this institution.

It has to deal with the children of parents who come from lands where the standards and customs are different from our own. Its chief duty is to replace these customs, tactfully, skilfully, and surely, with the best in our own system, yet retaining the good in theirs. But this is not all the school must do. It must equip the "new-Canadian" child with a definite knowledge of our language and all its attendant branches, so that he may be fitted to take his place commercially and socially. It must teach him to develop himself, not for his own gain alone, but because Canada, his adopted country, will claim something from him in citizenship. He must be inspired with the highest ideals of such citizenship and the desire to live up to them.

Fortunately the Canadian school has now passed its "reading, 'riting and 'rithmetic" stage, and the "new-comer" can get most of what he needs within its doors. The curriculum now covers such a wide range of subjects that the material knowledge gained may be great and the life-lessons greater. For the teacher, with National Service in view, will ever use her school subjects as the channel through which will flow her great aim—citizen-building.

Reading lessons supply vast stores of material in this connection and lead naturally and directly into history. How better may these "new-Canadians" learn of our standards and customs than by the study of our history and literature? Simple history stories, as found in the libraries

The School

(Registered)

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To the Teachers of Canada:

Since the pupil, for at least half the time given to English Literature, i dependent for instruction upon his book unaided by the teacher, it is of the greatest importance that he should use only

- (i) texts prepared by editors capable of giving the largest measure of aid to the instructor in interpreting the author to the pupil, and to the pupil in understanding the author, and
- (ii) texts that are attractive to the student, easy to read, and well-bound.

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which exactly meets these conditions.

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Among the titles included are: The de Coverley Papers; Browning's Poems (30); Burke On Conciliation; Carlyle On Burns, with a selection of Burns' Poems; Dickens, A Tale of Two Cities; Silas Marner; Cranford; The Vicar of Wakefield; The Sketch Book; the essays of Macaulay and the plays of Shakespeare usually read in schools; Scott's novels and longer poems; Tennyson's Idylls; Treasure Island. Send for a complete list.

Science Teachers will be interested to know that the collegiate Institutes of TORONTO, LONDON and WINDSOR have adopted

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better organization of these the school will become an ideal community centre as well as a first class teaching institution. The chairman of the Board is ambitious to have an organized series of lectures on cultivation, crops, fruit, trees, types of farm enterprise, farm management and economics, co-operative activities, and rural organization for women. Mr. Mitchell is anxious, in brief, to realize on all the educational resources of the country, and his colleagues are giving him valuable assistance.

An Early Canadian Orthoepist

(Continued from the September issue)

HON. WILLIAM RENWICK RIDDELL Justice of the Supreme Court, Toronto

"Attorney" he derives from the sheriff's "torn" (tourn) or court, which is distinctly better than the bad guess of our old law books deriving the word from "turn", the attorney taking the "turn" of another. Of course, it is the old French "atorné" or "atourné", "one constituted or appointed", as in a "power of attorney" to this day.

"Bumper", Todd says, is so called because it was customary to drink out of a full glass to the Pope (in French au bon Père, corrupted to "bumper")-he clearly had not in mind the distinction between a "brimming" glass and a "bumper" and perhaps had never noticed the "bump" or "hump" on a glass over-full. By the way have classical scholars yet agreed on the meaning of "vina coronant" (Verg. Aen. I, 724)? and does it differ from "magnum cratera corona induit" (Verg. Aen. III, 525)? and how? But he knew much about drink, drinkers and drinking; he says: "toasts are drank, but the men drunk", that Madeira (which he calls "ma-deer-ah") produces 10,000 pipes of wine yearly but exports 40,000, that a French wine merchant said "Give me six hours' notice of what wine you like, and you shall have it out of those two casks", that it is wrong to say that a man is "in liquor" when it is plain the liquor is in him, that a drink for a draught of beer is vulgar, that "Cornish" is a Devonshire term for a pipe or a glass among many people (he prefers "among" with the human race, "amongst" with other objects), that "goblet" is properly a glass "without a foot that its contents may be cleared at a draught", that "entire" was first made by one Harwood who mixed ale, beer and two-penny, that brewers in London use sulphuric acid "to give new beer the flavour of old" and that "the tipplers of Braintree and Brocking, Essex, divide a tankard of ale into three draughts which they call by the names of neckum, sinkum, and swankum."

"News" is given the popular derivation, N, E, W, S, the four quarters of the compass.

"Pamphlet" is another instance of folk etymology—it is derived from "par un filet" fastened by a thread, instead of Pamphilus—take your choice.

The odd word "haberdasher" is said to have arisen from a nickname given to the German Jews because of their offering their small wares with 'hab er dass, herr?": "buy you this, Sir?" Credat Judaeus Appella. This is, however, no more whimsical than the derivation of the Italian "brindisi", "a toast", which I was taught came from the German students prefacing the toast by "Ich bring dir's", "I bring you it", (equivalent to our Canadian vernacular "I looks towards you"). This derivation is given by the lexicographers—I find it, e.g., in Petrocchi's excellent Novo Dizionàrio Scolàstico. It is not probable that anything German will be adopted in Italy for some time after this—the Italians will not readily accept what the Germans bring.

"Culprit" is derived from "qu'il paroit" instead of from "cul" (contraction of culpabilis) and "prit" (or "prist" for "prest," old French, "ready").

"Courtier is of French origin meaning simply a broker or dealer in old clothes". Those interested in the French word will find in Littré's monumental work a description of the five kinds of courtier—our word is, of course, from "curia", "cours", "court". It is not unlikely that Todd was here facetious as when he said "Holy, pious. Some interpret it differently" adding the note, "As Aylmer, bishop of London, 1560, who on Sundays played bowls in his palace".

"Rum un" which seems to defy our modern etymologists, Todd says, "originated with J. Bell, schoolmaster, Minchinhampton, who, exercising a dull scholar on the word, *milk*, asked, for elucidation, what his mother put into her tea, to which he replied with naiveté, *rum*": and he adds that it originally meant "rum in tea, now an odd person".

Whether "hank" is derived from John Hanks, a celebrated Brabant manufacturer, or "humbug" from Hamburg, or "peddler" from "petty-dealer" everyone must decide for himself. The last looks too much like the celebrated derivation of "hostler" or "ostler" from "oat-stealer" to receive ready credence, the first looks too easy, but the second has much vraisemblance in these days.

To a number of words the author gives an orthography which is at least odd. In some cases there is a clear misprint, "vowasom" for "vavasour", "a fortioro" for "a fortiori", "audi alterim partem" for "alteram", voto mea vita, etc. But there are cases in which this is not so—"gass" for "gas" (the form given the word by Van Helmont, its inventor); "gimblot" for "gimblet" or "gimlet", "choaking" for "choking" (but this was not uncommon in Todd's time and even later,

just as "smoak" was found instead of "smoke". By the way he says that women near Manchester are notorious for smoking and that "Ladies of high rank in Russia smoke segars as fishwomen do here"—tempora mutantur). He properly distinguishes between "birth" and "berth", though the latter word was spelled "birth" by Todd in his Notes on Canada and the United States, by Gourlay and others of about the same time.

I cannot account for the translation of the Horatian odi profanum: "I hate profanity"—the profanum vulgus of Horace were simply the common herd, outside the fane or temple, not necessarily given to swearing or clothing themselves with cursing like as with their garments.

But one may safely say that Todd's version of these words of Horace is distinctly better than the schoolboy's translation of those other famous words of Horace: Post equitem sedet atra Cura. "After horse exercise the black lady sits down with care". Before this effort the translation of Vergil's Arma virumque cano, "Arm the man with a cane" must pale its uneffectual fire.

Quite the most interesting part of the very interesting volume is the mass of curious information given in the notes at the foot of the pages—I cannot vouch for the accuracy of all of it, however.

"Eating animal food arose from a Phoenician priest ascertaining by accident the flavour of a burnt offering". This is too much like Charles Lamb's story of the origin of roast pork to command ready acceptance, even if the 9th Chapter of Genesis is to be disregarded. "Baptism originated with the deluge because the world was purged by water"—that I leave to McMaster University.

"The French having no word for 'good-nature' are charged with the want of it". By whom? And what is wrong with "bonhomie"?

It is wrong to say "ivory" for "Highbury Barn" (near Islington).

Be careful at the butcher's—"Horse's tongue is often sold for a bullock's; but this is rough, and that is smooth". While as to "lamb's tongue"—it "in buying requires care, as some vendors substitute that of a dog".

"Isabella colour—from a Spanish princess by name Isabella who vowed not to change her linen until Ostend was taken by her troops. It held out a long time, when her subjects, unwilling to call her linen dirty, named it isabella colour".

"Anciently when executed in France, a Jew was hung between two dead dogs. In Germany, he is allowed to marry thirteen times and no more". A gentleman in America wrote "Jacob" without one of its proper letters, "Gegup"—this is equal to "kawphy" for "coffee", and to the Irish magistrate's feat during the Commonwealth of spelling "usage", "yow-zitch" averring when rebuked that nobody could possibly spell with pens made from the quills of Irish geese.

"At Judges' Chambers in Ireland, knockers are for Barristers and bells for Solicitors. In Scotland these only are genteel while those are vulgar. The former in England are set apart for mistresses and the latter, their maids".

"In Ireland 'Good dry lodgings' means lodgings without board."

"All my eye and Betty Martin" is "a whimsical corruption of a prayer to a saint in the Romish missal beginning 'O mihi beate Martine"—notwithstanding that in the proper ecclesiastical pronunciation, "mihi" is not "my-hy".

"The whole library of one isle (Scilly), 1720, consisted of the bible and Dr. Faustus"—not a bad library, either, be it said.

A Soph (University undergraduate) is "A leveller of Truth at the shrine of Folly"—second-year men will please take notice.

"A hearty supper may be called the many-headed monster of disease"—and this from an Englishman!

"In Canada I have seen one of the hairs from a horse's tail put into water become in a week a *living animal*". So have I—a plague on science which proves that I didn't.

"Toothache is instantly relieved if not cured by the application of nitric acid"—like the tooth paste Mark Twain speaks of which took off the tartar, indeed, but took the enamel off with it.

"We put the fork on the left of the plate, a German in it, a Frenchman uses it alone and a Russian as a tooth-pick"—I have seen a man scratch his head with it.

"When part of a fish, the i (in gill) is then pronounced hard as in hill"—this is too much for me, I cannot interpret it.

"Glutton—as Albinus, an ancient British Emperor, who sometimes ate 500 figs, 100 peaches, 20 lbs. of dry raisins, 10 melons and 400 oysters for breakfast"—let Gargantua look out for his laurels.

I extract just one more of the numerous plums in this delectable book, and leave it with regret,—"Tiny (small) formerly confined within the boundaries of the burgeois, though it now ranges amongst the politest circles. The same may be said of *fat* which was as closely pent up in our various markets, but now associates with the best company".

Ave et vale, Henry Cook Todd, antiquarian and scholar!

An English schoolmaster once said to his boys that he would give a crown to any one of them who would propound a riddle he could not answer.

[&]quot;Well," said one of them, "why am I like the Prince of Wales?"

The master puzzled his brains for some minutes for an answer, but could not guess the correct one. At last he exclaimed:

[&]quot;I'm sure I don't know."

[&]quot;Why," replied the boy, "because I am waiting for the crown."

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HON. WILLIAM RENWICK RIDDELL Justice of the Supreme Court, Toronto

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Final "ate" is "et", e.g., "separate" is "sep-ur-et"; similarly "rhubarb" is "roo-burb"; "sirup" or "sirop" ("syrup" is not given) is "sur-rup"; "tacit" is "ta-sit", not "tas-it", why, it is hard to see—the

original tacitus, taceo, have the "a" short.

"Mercy" is "mer-se", the first vowel as in "meadow"—"marcy" is vulgar but "murcy" is correct. One is at a loss to know where the author comes to rest between the Scots "maircy" and the Hibernian "murrcy". "Honeycomb" is "hun-ne-koome" as in the days when "gold" was "goold" and "Rome", "room". Todd will not permit the latter, "as well might we say ruman and hume for roman and home". (It is not without interest to note that many of the family of the Homes call themselves Hume).

"Sewer", a drain, is "so-ur"; "obeisance" is "o-be-sanse". "Hearth', is "hurth" to rime with "earth"—as far from our common "harth' as from the Scottish "herrth".

"Onion" he pronounces "on-yun" and will not accept "un-yun"—the writer, Onion, is said to pronounce his name "On-i-on' with the accent on the penult, but every one has the right to pronounce his name as he wishes; Mr. Reach was not compelled to cease calling himself "Re-ach" by the humorist asking him to "re-ach me a pe-ach". "Peach" Todd pronounces "peesh", I presume by analogy with the French "pêche" but surely without warrant in usage or authority. It is easy to understand why a classical scholar would pronounce "chart" as "kart"—"Magna Carta" has, I hope, quite driven out "Magna Tcharta"; but it is not so easy to explain why he calls "pan-creas", "pan-krese" (κρέας) or "Idumea", "I-dew-me-a", with the accent on the antepenult (perhaps from Ἰδουμενεύς). "Tor-ka" is the old pronunciation

of "Torquay", now called "Tor-kee". "O-re-un" as Todd gives it, with the accent on the first syllable is intolerable—"O-ri-on" accents on the second; "lampblack" we are told has the "p" silent; the "l" must not be sounded in "fault"; this is "fawt", "fault" is vulgar. We know Pope and Swift rhymed "fault" with "thought" and Johnson in 1755 noted that the "l" was generally omitted in conversation. No one but a Scotsman now says "fawt"; but the Scot must grieve over "gollf" for his beloved "go'f", consoling himself for the time with the thought that it is not yet "golluf".

For one who used to chew "slippery-ellum-bark" and resented being forced to say "elm", the most curious of Todd's pronunciations are such as "lek-tew-ur", "lek-tew-ur-ship", "mew-er", "flou-ur", "mi-az-em", etc., for "lecture", "lectureship", "mure", "flour", "miasm", etc.—"nature" as we have seen is made dissyllabic, which increases the wonder that "lecture" is given three syllables. "Adagio" is given four syllables "a-dadg-e-o" notwithstanding that the "i" is here but a sign to soften the "g" and not a real letter. In the case of words from the French, Todd's practice is not uniform—he says "me-moir" and rejects "mem-war"; and "a-ma-tew-ur", rejecting "am-a-tur"—his pronunciation of "amateur" is still in vogue with those who finish a dinner with a "lick-kew-ur" having begun it with a "hor-dover". "Presentiment" he pronounced "pre-san-te-mong" with the accent on the antepenult: "burgeois" was "burdg-wau" (except, of course, in printing when it is "bur-jois").

Many of the pronunciations called corrupt or vulgar by Todd are now accepted: we say "a-gen", "bin", "caviare", "extrordinary", "laundry" "palfrey", etc., where he would say "a-gain", "been" (rhyming with "seen") "kaveer" "extra-ordinary", "lan-dre", "paul-fre", etc. With the exception of "ka-veer" all these are still allowed. The present pronunciation of the first, second, and third, I had driven into my unwilling head more than half a century ago at the same time the first "d" was silenced in "Wednesday". Use has made them familiar and tolerable, but I am still resentful and unconvinced; however, usus norma loquendi. I am reconciled to "venzn" for "venison"-Todd gives "ven-ne-zun" and will have nothing to do with "ven-zun"; we go one better and make a monosyllable out of his trisyllable. Why he says "un-veel" for "unveil", "ung-tshus" for "unctuous", and "E-pra" for "Ypres" is a mystery—the last has had a recrudescence in these days with those who speak of the "Vo-zhay" mountains. For the old pronunciation of "tea", i.e., "tay", he cites Pope's

"Tell, tell your grief; attentive will I stay
Though time is precious and I want some tea."

He does not give the poet's better known lines—
"Here, thou, Great Anna! whom three realms obey,
Dost sometimes counsel take, and sometimes tea".

All of us but the clergy, whom it specially concerns, have difficulty in saying "Sim-ony" as we should; remembering Si-mon Magus, we are apt to say "Si-mony". Don't.

By comparing the accent in this book and that in present use, the recessive tendency of English accent is observable—"placard", "finance", "festive", etc., are now generally accented on the first syllable ("festive" always) but in Todd's time that was not allowed—at least by Todd. He said "en-ve-lope", accenting the last syllable, we "anv-lop", accenting the first; he pronounced "abdicative" with the accent on the antepenult, we accent the first syllable. Old-fashioned people still speak of the orchestra as Byron did, with the second syllable stressed, not the first; but it would be hard to find one who accented "remediless" in the same way.

It is more difficult to account for the pronunciation of "academy" by Todd; he accents the first syllable though he must have known the original "ἀκαδημία"; "reverie", with the ultimate accented may be accounted for by its French origin—also "travail", "trav-ale", with the final accent.

The Orthoepist has little patience with those who do not agree with him—they are the mob, the canaille, the vulgar, the low Cockneys, lispers, and letter clippers—when mechanics called "solder", "sodder", instead of "sol-der", they should remember that "workmen ought to accept their pronunciation from scholars and not scholars from workmen"; and he refused to allow his pronunciation to be directed by that of a parish clerk.

He is "down" on the "pure English vulgarism" of the "addenda of 'don't I' in 'I always do, don't I'?" He does not like "by the bye', a phrase originally introduced from Scotland"; and "dissenting clergyman" for "dissenting minister" is wrong—the old form "he's gone dead", he says, is now disused (Todd did not mix with the coloured brethren, evidently). We should not say "no more do I" but "nor do I", for "unless finishing a sentence, more always requires than after it" (the more I think of this, the less I am inclined to agree).

A very curious feature is the derivations given, some of them now approved, but many whimsical "folk-etymology". "Cockney" he derives from the Londoner who in the country heard the cock "neigh"—this is like the boy from "The Ward" who was amused to hear the lambs "bark", and probably equally apocryphal. But anyone is at liberty to accept this etymology instead of the fantastic "cockenay" (cock's egg) which seems to be now the favourite.

"Attorney" he derives from the sheriff's "torn" (tourn) or court, which is distinctly better than the bad guess of our old law books deriving the word from "turn", the attorney taking the "turn" of another. Of course, it is the old French "atorné" or "atourné", "one constituted or appointed", as in a "power of attorney" to this day.

"Bumper". Todd says, is so called because it was customary to drink out of a full glass to the Pope (in French au bon Père, corrupted to "bumper")—he clearly had not in mind the distinction between a "brimming" glass and a "bumper" and perhaps had never noticed the "bump" or "hump" on a glass over-full. By the way have classical scholars yet agreed on the meaning of "vina coronant" (Verg. Aen. I, 724)? and does it differ from "magnum cratera corona induit" (Verg. Aen. III, 525)? and how? But he knew much about drink, drinkers and drinking; he says: "toasts are drank, but the men drunk", that Madeira (which he calls "ma-deer-ah") produces 10,000 pipes of wine yearly but exports 40,000, that a French wine merchant said "Give me six hours' notice of what wine you like, and you shall have it out of those two casks", that it is wrong to say that a man is "in liquor" when it is plain the liquor is in him, that a drink for a draught of beer is vulgar, that "Cornish" is a Devonshire term for a pipe or a glass among many people (he prefers "among" with the human race, "amongst" with other objects), that "goblet" is properly a glass "without a foot that its contents may be cleared at a draught", that "entire" was first made by one Harwood who mixed ale, beer and two-penny, that brewers in London use sulphuric acid "to give new beer the flavour of old" and that "the tipplers of Braintree and Brocking, Essex, divide a tankard of ale into three draughts which they call by the names of neckum, sinkum, and

"News" is given the popular derivation, N, E, W, S, the four quarters of the compass.

"Pamphlet" is another instance of folk etymology—it is derived from "par un filet" fastened by a thread, instead of Pamphilus—take your choice.

The odd word "haberdasher" is said to have arisen from a nickname given to the German Jews because of their offering their small wares with 'hab er dass, herr?": "buy you this, Sir?" *Credat Judaeus Appella*. This is, however, no more whimsical than the derivation of the Italian "brindisi", "a toast", which I was taught came from the German students prefacing the toast by "Ich bring dir's", "I bring you it", (equivalent to our Canadian vernacular "I looks *towards* you"). This derivation is given by the lexicographers—I find it, e.g., in Petrocchi's excellent *Novo Dizionàrio Scolàstico*. It is not probable that anything German will be adopted in Italy for some time after this—the Italians will not readily accept what the Germans bring.

"Culprit" is derived from "qu'il paroit" instead of from "cul" (contraction of culpabilis) and "prit" (or "prist" for "prest," old French, "ready").

"Courtier is of French origin meaning simply a broker or dealer in old clothes". Those interested in the French word will find in Littré's monumental work a description of the five kinds of courtier—our word is, of course, from "curia", "cours", "court". It is not unlikely that Todd was here facetious as when he said "Holy, pious. Some interpret it differently" adding the note, "As Aylmer, bishop of London, 1560, who on Sundays played bowls in his palace".

"Rum un" which seems to defy our modern etymologists, Todd says, "originated with J. Bell, schoolmaster, Minchinhampton, who, exercising a dull scholar on the word, *milk*, asked, for elucidation, what his mother put into her tea, to which he replied with naiveté, *rum*": and he adds that it originally meant "rum in tea, now an odd person".

Whether "hank" is derived from John Hanks, a celebrated Brabant manufacturer, or "humbug" from Hamburg, or "peddler" from "petty-dealer" everyone must decide for himself. The last looks too much like the celebrated derivation of "hostler" or "ostler" from "oat-stealer" to receive ready credence, the first looks too easy, but the second has much vraisemblance in these days.

To a number of words the author gives an orthography which is at least odd. In some cases there is a clear misprint, "vowasom" for "vavasour", "a fortioro" for "a fortiori", "audi alterim partem" for "alteram", voto mea vita, etc. But there are cases in which this is not so—"gass" for "gas" (the form given the word by Van Helmont, its inventor); "gimblot" for "gimblet" or "gimlet", "choaking" for "choking" (but this was not uncommon in Todd's time and even later, just as "smoak" was found instead of "smoke". By the way he says that women near Manchester are notorious for smoking and that "Ladies of high rank in Russia smoke segars as fishwomen do here"—tempora mutantur). He properly distinguishes between "birth" and "berth", though the latter word was spelled "birth" by Todd in his Notes on Canada and the United States, by Gourlay and others of about the same time.

I cannot account for the translation of the Horatian *odi profanum*: "I hate profanity"—the *profanum vulgus* of Horace were simply the common herd, outside the fane or temple, not necessarily given to swearing or clothing themselves with cursing like as with their garments.

But one may safely say that Todd's version of these words of Horace is distinctly better than the schoolboy's translation of those other famous words of Horace: *Post equitem sedet atra Cura*. "After horse exercise the black lady sits down with care". Before this effort the

translation of Vergil's Arma virumque cano, "Arm the man with a cane" must pale its uneffectual fire.

Quite the most interesting part of the very interesting volume is the mass of curious information given in the notes at the foot of the pages—I cannot vouch for the accuracy of all of it, however.

"Eating animal food arose from a Phoenician priest ascertaining by accident the flavour of a burnt offering". This is too much like Charles Lamb's story of the origin of roast pork to command ready acceptance, even if the 9th Chapter of Genesis is to be disregarded. "Baptism originated with the deluge because the world was purged by water"—that I leave to McMaster University.

"The French having no word for 'good-nature' are charged with the want of it". By whom? And what is wrong with "bonhomie"?

It is wrong to say "ivory" for "Highbury Barn" (near Islington).

Be careful at the butcher's—"Horse's tongue is often sold for a bullock's; but this is rough, and that is smooth". While as to "lamb's tongue"—it "in buying requires care, as some vendors substitute that of a dog".

"Isabella colour—from a Spanish princess by name Isabella who vowed not to change her linen until Ostend was taken by her troops. It held out a long time, when her subjects, unwilling to call her linen dirty, named it isabella colour".

"Anciently when executed in France, a Jew was hung between two dead dogs. In Germany, he is allowed to marry thirteen times and no more". A gentleman in America wrote "Jacob" without one of its proper letters, "Gegup"—this is equal to "kawphy" for "coffee", and to the Irish magistrate's feat during the Commonwealth of spelling "usage", "yow-zitch" averring when rebuked that nobody could possibly spell with pens made from the quills of Irish geese.

"At Judges' Chambers in Ireland, knockers are for Barristers and bells for Solicitors. In Scotland these only are genteel while those are vulgar. The former in England are set apart for mistresses and the latter, their maids".

"In Ireland 'Good dry lodgings' means lodgings without board."

"All my eye and Betty Martin" is "a whimsical corruption of a prayer to a saint in the Romish missal beginning 'O mihi beate Martine" —notwithstanding that in the proper ecclesiastical pronunciation, "mihi" is not "my-hy".

"The whole library of one isle (Scilly), 1720, consisted of the bible and Dr. Faustus"—not a bad library, either, be it said.

A Soph (University undergraduate) is "A leveller of Truth at the shrine of Folly"—second-year men will please take notice.

"A hearty supper may be called the many-headed monster of disease"—and this from an Englishman!

"In Canada I have seen one of the hairs from a horse's tail put into water become in a week a *living animal*". So have I—a plague on science which proves that I didn't.

"Toothache is instantly relieved if not cured by the application of nitric acid"—like the tooth paste Mark Twain speaks of which took off the tartar, indeed, but took the enamel off with it.

"We put the fork on the left of the plate, a German in it, a Frenchman uses it alone and a Russian as a tooth-pick"—I have seen a man scratch his head with it.

"When part of a fish, the i (in gill) is then pronounced hard as in hill"—this is too much for me, I cannot interpret it.

"Glutton—as Albinus, an ancient British Emperor, who sometimes ate 500 figs, 100 peaches, 20 lbs. of dry raisins, 10 melons and 400 oysters for breakfast"—let Gargantua look out for his laurels.

I extract just one more of the numerous plums in this delectable book, and leave it with regret,—"Tiny (small) formerly confined within the boundaries of the burgeois, though it now ranges amongst the politest circles. The same may be said of *fat* which was as closely pent up in our various markets, but now associates with the best company".

Ave et vale, Henry Cook Todd, antiquarian and scholar!

A CODE OF LEGAL ETHICS

BY

WILLIAM RENWICK RIDDELL

Justice of the Supreme Court of Ontario.

A Paper Prepared for the Canadian Bar Association Meeting at Winnipeg, Man., August, 1919.

The Canadian Bar Association honoured me by a request, through the President and Secretary, "to prepare an address on Professional Ethics to be delivered to the Association at its annual meeting in Winnipeg in August;" and the Convener of the Committee appointed at Montreal in 1918 on Professional Ethics, was good enough to call upon me in connection with the request. From what was said by Mr. MacMurchy it appeared that the real matters to be discussed were the advisability of a written Code of Ethics, and the contents of such Code if it should be considered advisable to formulate one. To both the Secretary and Mr. MacMurchy I expressed an opinion adverse to a written Code of Ethics; and both desired me, nevertheless, to prepare an address on the subject.

In my own Province for nearly a century and a quarter, jurisdiction over the Bar has been exercised by the Law Society of Upper Canada, organized in 1797 under the authority of the statute of that year of the young Province of Upper Canada—and since that time no advocate has been heard by the Courts unless and until he has been called to the Bar by that Society. Full jurisdiction over the attorney or solicitor the Law Society does not possess: it prescribes the curriculum for, it educates, it examines, it certifies the fitness to be admitted as a solicitor of the candidate, but there its authority and duty end—and even that jurisdiction was not original, but was given by the statute of 1858. But in our system it has always been and is now the case that all but a very small percentage of solicitors are barristers, and of barristers are solicitors.

The first chapter of the first Statute of the Province of Upper Canada (32 Geo. III., c. 1), introduced the laws of England as the rule for decision in all matters of property and civil rights, while the criminal laws of England formally prescribed for the conquered colony by the Royal Proclamation of 1763 had been left untouched by the Quebec Act of 1774 (14 Geo. III., c. 85). Accordingly when the profession in the province was organized the law, civil and criminal, in force was the existing law of England (1997).

land (with a few trifling exceptions).

The Act of 1797 was intended to place the profession of law on much the same basis as in England, but the circumstances of the colony did not allow of this being fully accomplished. One attempt to introduce the English system of prohibiting the same person to be both barrister and solicitor was defeated by the Benchers themselves, a second by the Judges, and the third and last by the Legislature; and the system is too firmly established to be now shaken.

It may, therefore, be said with reasonable accuracy that the Law Society has jurisdiction over the profession at large.

The Bar and the Bench of our province have followed the traditions of England, recognizing that England is their intellectual ancestor. We in Ontario are inclined to claim, perhaps to make rather a boast, that the Bar and Bench of the western provinces have been largely recruited from our province and share our traditions. Where that is not the case, the traditions of the profession in England are equally potent as with us.

The Bar and Bench of the Maritime Provinces have their own traditions, but these, like ours, are based on England.

Our illustrious sister, Quebec, stands in a different position: her criminal law indeed is English in its origin, but her civil law is based not upon the Common Law of England, but upon the Civil Law of Rome. Yet most of her rules, customs and practices are the same as ours.

Remembering the history of our profession, I thought it wise to consult the Chiefs of Bench and Bar in England; and as Ireland has much the same system, and traditions, I at the same time consulted those in that land. Scotland has a law based on the Civil Law as has Quebec, and I asked the opinion of some of the leaders in Scotland.² Without a single exception, all who replied were opposed to a written Code of Ethics.³

The opinion of the profession in the British Isles is most persuasive, but, of course, it should not, it cannot be considered conclusive upon us, however closely we are affiliated, however much we owe to the Mother Country, however near the practice of the Courts. Circumstances in this Dominion, as in other Dominions, may make a difference advisable if not imperative

in system.

As against the practice in the Old Land we may be inclined to consider that in the various States of the American Union—the usages of trade and of society, the "genius of the people" are much more near our own in many of these States than in England; while politically we are intensely British (and have no desire to change our position) in the general conduct of business, and of intercourse, in form and customs we are inclined rather to the American. Most of the Bar Associations of the various States of the Union have their formal Codes of Ethics as has the general Society—the American Bar Association. I am favoured in being an honorary member of several of these Bar Associations, and have enjoyed the privilege of frequent and somewhat close association with their members; and I have found an almost universal approval of the written Code.

Although in most cases other reasons were alleged for that approval, I am wholly of the opinion that in many instances that view is due in no slight degree to the fact that the United States and the separate States have all a written Constitution. The mind of the American lawyer naturally and instinctively inclines to written formulation of all precepts, all rules, all principles.

The difference in the connotation of the words "Constitutional" and "Unconstitutional" in the American usage and our own will illustrate my meaning. In the United States the "Constitution" is a written document of so many words and letters, with us the Constitution is the indefinite and indefinitely formulated principles upon which a British people should be governed-what is "Constitutional" and what is "Unconstitutional" in the United States is for the Court to decide on legal principles and methods by an examination of the formal document to be known and read of all men—in Canada it is for Parliament, or in the last resort the electorate, by the consideration of what is for the benefit of the people. In the United States anything transgressing the written document is illegal however wise it may be. With us to say a proceeding is "Unconstitutional" is to say it is legal, however unwise, or even oppressive, it may be. Whether my impression of the cause of the formulation of a Code of Ethics in the United States is well founded or not, it is manifest that the practice in that land is not binding upon us, like as the two countries are in most particulars.

I propose, therefore, to attack the question without reference to other countries, and briefly to state the conclusions I have arrived at. I may be permitted to say that these conclusions are not formed, though they may be stated, now for the first time.

In the first place it may be assumed that it is not proposed to lay down a Code, disobedience to which would result in disbarment temporarily or otherwise. Our Law Society of Upper Canada has ample power to disbar in a proper case, but the power has been exercised only in the case of crime whether after conviction or otherwise. So far as I know it has never been suggested that a Code of Rules should be laid down to govern the Discipline Committee or Convocation in their duties in that regard, and I can see infinite difficulties in the way of such codification.

Not to dwell upon that phase, however, let us consider the real proposition, which is to lay down a Code the breach of which will lead to the disapproval of professional brethren, to exclusion from association and fellowship, to ostracism by respectable members of the Bar. If it were proposed to make the Code a Penal Code violation of which would render the offender liable to disbarment, legislation would be necessary, and many considerations would arise which may now be passed over—considerations which to my mind would be fatal to the proposition.

What of a Code without such consequences? of a Code intended to govern the conduct of the practitioner, but the violation of which would involve only social punishment? or a Code intended simply as advice as to conduct?

It seems to me much like drawing up a Code of Etiquette to make a gentleman.⁴

When I used to deliver lectures to the students of the Osgoode Hall Law School on Legal Ethics, I devoted most of my time and efforts to showing that the profession of law is a liberal as well as a learned profession, that there is and can be nothing in the practice of law inconsistent with the highest type of scholar, gentleman, and Christian. With that as a text all else follows—the lawyer, a gentleman, will act as such, he will treat all, whether professional brethren or laymen, as he would be treated in like case—that, it seems to me, is the whole of the law and the prophets. I would have in every law school two or three lectures in each year on legal ethics in that sense lectures either by the president or (preferably by) some one in active and extensive practice, devoted to inculcating in the mind of the students the all-important fact that the lawyer who is worthy of his profession is not a mere money making machine, but a gentleman respecting himself and his fellow men—he may and should make all the money he honestly and honourably can, but only so much and how as he honestly and honourably can. Is there any more need for a Code for lawyers than for members of a club? Both are expected to act as gentlemen, but no one would think of codifying the duties of club members. In that view a Code is superfluous, unnecessary.

There are, however, positive objections to a Code which states any but the most indefinite generalities. Any Code which entered into particulars would in my view do more harm than good — and for two reasons: First, when a Code of Rules has been formulated it is most natural, almost inevitable indeed, for its provisions to be considered exhaustive; whatever is forbidden is wrong, and in most minds the old logical fallacy of the "undistributed middle" is not avoided, but it is considered that what is not forbidden is not wrong. When one is charged with wrong doing, and told that he must act in a particular way, his defiance is "on what compulsion must I?" "It is not so written in the Code."

It is the natural and inevitable consequence of any written code to divide sharply what is forbidden from what is not—and what is not forbidden too often is considered to be allowed.⁵ Anyone who is accustomed to refer to a written Code for the rule to direct his conduct will be apt to believe that it is complete, and will generally give himself the benefit of any doubt or omission.⁶

Again, unless I am quite in error, any attempts to particularize would be dangerous. Let me take two examples.

A well-known compilation by a Bar Association of the highest rank both as to members and otherwise, has it "His," i.e., the lawyer's, "appearance in Court should be deemed equivalent to an assertion on his honour that in his opinion his client's case is one proper for judicial determination." That I make bold to deny-while the lawyer may not bring into Court a dishonest claim, or set up a dishonest defence (because he is an honest man, and the law compels no man to dishonesty), the client is entitled to the services of his lawyer to enforce any claim or defence which is not dishonest; the client is entitled to the full and candid opinion of his lawyer, but when that is given he is entitled to have his case put to the Court whatever may be the lawyer's opinion on the law. Neither Court nor client is at all concerned with the opinion of counsel—the client demands, the Court enforces the law, as it is found to be—that is the duty of the Court, the right of the client. Counsel makes no assertion by implication of his own opinion when he argues the case of his client, and it would be unjust and improper to consider that counsel when arguing is representing that there was in his opinion doubt as to the law.7

It may be said that I have misconceived the meaning of the rule which I am discussing—if so and if the rule means simply that counsel in arguing a case is giving it an assurance that his claim is an honest one, this indicates another danger arising from the language employed. The formulation of rules free from ambiguity unless they be expressed in the most general and therefore futile terms is of enormous difficulty; and not only dolus latet in generalibus but the dishonest lawyer's ingenuity will enable him to misconstrue language with some plausibility—and where all else fails he can plead misunderstanding.

Another example: The solicitor for a mortgagee demands \$14.75 interest due—the mortgagor sends him a cheque for \$14.50; the solicitor returns it and brings an action for fore-closure. The Court and the profession are shocked—and probably such conduct would be strongly animadverted upon by the Code builders; but the conduct of the solicitor may have been wholly justifiable. The mortgagor may have been following a course of petty dishonesty—this may have been but the culmination of a long series of attempts to defraud his creditor out of small sums, and the action for foreclosure brought after warning of the effect of such conduct if continued; it may be that the mortgagee has been put to trouble and expense in getting his own, and that the action for foreclosure was in simple self-defence.

Circumstances are so different that what looks like oppression in the abstract case is plain dealing and good business in the concrete.

We should, it seems to me, avoid creating an artificial conscience. It is well known that a statute against a particular course of conduct will inevitably bring about a state of public opinion that such conduct is morally wrong, however innocent it may be in fact. A familiar instance is the feeling now widespread that it is wrong for a tradesman to prefer one creditor to another. To anyone who takes the trouble to think over the matter, it will be plain that sometimes it is consistent with the highest morality to do that very thing—yet in our Ontario law it is allowable only if money is paid. As though there were in morals a difference between giving money and money's worth!

Again, all common law courts are adamant against what has been branded with the horrid name of champerty—no lawyer can acquire an interest in the subject matter of an action. A young mining engineer without much business finds that there is a "mining proposition"—the location is owned by a man too poor or too indifferent to develop it and ascertain its value—the engineer looks over the ground and sees a good prospect of making the mine pay, and he enters into a contract with the owner that he will at his own expense develop the mine for half the profits. That is good business, good morals, and is for the advantage in common of both parties; and the law approves, and will enforce such a contract.

The brother of the engineer, a young solicitor, finds out that a man has a claim to valuable property but is too poor or too indifferent to enforce his claim—the solicitor examines into the title, etc., and sees a good prospect of recovering the property, and he makes a contract that he will at his own expense bring an action and recover the land for half the profit. No Court would approve or enforce such a contract—it may be good business and for the advantage in common of both parties, but the Court says it is bad morals. Wherein does the difference between the two cases consist?

We have in the latter case an artificial conscience.

I know it will be answered interest reipublicae ut sit finis litium. But that does not mean that it would be for the advantage of people at large, that there should be no law suits—so long as injustice prevails a lawsuit to end an injustice is infinitely better—and, I add, infinitely more in harmony with the genius of our people—than passive submission to the injustice. The maxim means that it is for the interest of the people that a lawsuit when started should be carried to a conclusion with all due expedition—and if it means anything more it, is that it will be a good thing for the people when wrong shall cease, and there will be no further need for litigation.

The real difference is that one contract is forbidden by law and the other is not.9

So long and in such places as this rule is law, it is proper to say, as one Code does, "the lawyer should not purchase any interest in the subject matter of the litigation which he is conducting "-but that there is a general ethical rule I deny.

Contingent or conditional fees are in the same category. 10

These are some of the reasons which, to my mind, make it inadvisable to formulate a Code of Ethics. 11

My opinion in short is that a Code of Legal Ethics, if sufficiently general, is unnecessary—if specific is dangerous.

WILLIAM RENWICK RIDDELL.

NOTES.

Note 1.

The following is the correspondence.

156 Yonge St., Toronto, 1st May, 1919.

THE HON. MR. JUSTICE RIDDELL, Osgoode Hall, Toronto.

Re Professional Ethics.

DEAR JUDGE RIDDELL:-

At the annual meeting in Montreal, a committee was appointed on Professional Ethics. Mr. Angus MacMurchy, K.C., was named as convener. The committee was instructed to take the code of Legal Ethics prepared by the American Bar Association as a basis for a Canadian Code, and to report thereon. At the Council meeting on Monday, it was decided to ask yourself and Mr. Justice Mignault of the Suprementation of the Su Court to prepare an address on professional ethics, to be delivered to the Association at its annual meeting in Winnipeg, during the last week in August. I trust that you and Judge Mignault will be able to help us on this important subject. Possibly some co-operation might lessen the work. In the meantime, I am enclosing a copy of the American Code.

Yours faithfully,

R. J. Maclennan.

Secretary.

OSGOODE HALL, Toronto, 2nd May, 1919.

R. J. MACLENNAN, Esq., Secretary Canadian Bar Association, 156 Yonge Street, Toronto, Ont.

Your letter of yesterday is at hand. I shall, if physically able, prepare something on professional ethics for the meeting in Winnipeg. I should, however, say that I am wholly opposed to anything in the way of a written code of ethics for the profession, and if I write I shall write in that sense. Perhaps after this expression of opinion, which has been formed after long and careful consideration, your Association would not care to have anything from me.

Yours very truly, WILLIAM RENWICK RIDDELL.

Government House, Winnipeg, 3rd May, 1919.

THE HON. W. R. RIDDELL, Supreme Court of Ontario, Toronto. MY DEAR MR. JUSTICE RIDDELL.

At the last meeting of the Council of the Canadian Bar Association, held on Monday, it was unanimously decided that you and Mr. Justice

Mignault be asked to suggest a code of professional ethics for the next annual meeting. In order to facilitate your work, it was thought that the American Bar Association's code might form a good basis for a Canadian code. We think it very desirable that in every Province of Canada the same professional ethics should prevail. Having been so long at the Bar, you will appreciate this, and the opinion was expressed that there were no others better qualified than you and Mr. Justice Mignault to take up this subject and give the Association the benefit of your thought. An important place will be left on the programme for

I am, yours very sincerely, J. A. M. AIKINS.

Note 2.

A letter in the following form was sent (amongst others) to

The Lord Chancellor. The Lord Chief Justice. The Attorney-General, and

The Chairman of the General Council of the Bar, at London; also to

The Lord Chancellor of Ireland. The Lord Chief Justice, Ireland. The Attorney-General, Ireland, and

The President of the Incorporated Law Society of Ireland, at Dub-

lin, and also to

The Lord Justice General. The Lord Justice Clerk, and

The Lord Advocate at Edinburg.
"Mr. Justice Riddell presents his Compliments to the Lord Chief
Justice of England.

Mr. Justice Riddell has been asked by the Canadian Bar Association to write a paper, or deliver an address, at the coming meeting in August of the Association on a Code of Legal Ethics.

Mr. Justice Riddell is himself not in favour of a written code of ethics, and sees no necessity for it; but it is known that others have a

different opinion.

Mr. Justice Riddell would therefore ask the Lord Chief Justice if there is a written Code of Ethics for the legal profession in England, and also whether the Lord Chief Justice approves of such a code. If such a code exists, Mr. Justice Riddell would be glad of a copy of the same. The legal profession in Ontario, as it at present exists, began in 1797, and has so far found no necessity for a code.

May 6th, 1919.'

Note 3.

The following letters were received:-

1. From the Lord Chancellor.

"House of Lords, S.W.I.

SIR,-

I am directed by the Lord Chancellor to reply to your memorandum of the 6th of May, with reference to the address proposed to be delivered by you at the meeting of the Canadian Bar Association on a Code of

Legal Ethics.

There is not in England any written code regulating the etiquette and practice of the Bar. The General Council of the Bar from time to time deals with cases submitted to it for decision or advice with reference to practice and etiquette, and the answers to these questions are published in the annual statement issued by the Council. The Bar Council has, however, no disciplinary powers. Certain rules with reference to practice as to retainers were prepared by the Council of the Law Society in consultation with the Bar Committee (whose place has now been taken by the General Council of the Bar), and sanctioned by the Attorney-General in July, 1892. The decisions or opinions of the General Council of the Bar and the rule as to retainers will be found printed in the Yearly Supreme Court Practice, 1916, at page 2054. These documents, however, do not constitute a complete code in the matter.

Questions arising with reference to the conduct of barristers, students of the Inns of Court, in which the conduct of any such barrister or student is impugned, are dealt with in the first place by the Benchers of the Inn to which the barrister or student belongs, and on appeal by the Judges of the High Court sitting together. The decisions of the Benchers and of the Judges in the case of an appeal are, as a rule, not published except in so far as they impose any penalty upon the barrister or student concerned.

In addition, there is, as is no doubt well known to you, a considerable floating body of practice and tradition in these matters, which for the most part, is not committed to writing, and certain bodies of barristers, for example, the members of a particular circuit or Sessions mess, are subject to rules regulating the conduct of the members of the circuit or mess, which in some cases are and in others are not committed

to writing.

While on broad questions of professional etiquette and practice, no difficulty arises, and any member of the Bar can without difficulty regulate his conduct according to the view generally accepted in the profession, difficult questions sometimes arise under general or local rules, whether written or otherwise. It is open to any member of the Bar in any such case to submit the matter for advice or decision to the General Council of the Bar.

So far as the solicitor's profession is concerned, I am to suggest that you should seek advice from the Law Society, whose Secretary is Mr. E. R. Cook, Law Society's Hall, Chancery Lane, London W.C. 2.

I am, sir,

Your obedient servant, CLAUD SCHUSTER."

THE HON. MR. JUSTICE RIDDELL.

2. From the Lord Chief Justice.

"ROYAL COURTS OF JUSTICE,

London, W.C. 23/5/19.

The Lord Chief Justice, England, presents his compliments to Mr. Justice Riddell, and in reply to his letter of the 6th inst., begs to inform him that no such written code of ethics exists in England, nor is His Lordship of opinion that there is any need for it. Hon. Mr. Justice Riddell,

Supreme Court of Ontario, Toronto."

3. From the Attorney-General.

"ATTORNEY-GENERAL, May 23rd, 1919.

The Attorney-General presents his compliments to the Hon. Mr. Justice Riddell, and in reply to his letter dated the 6th inst., has to say that there is no written code of ethics for the legal profession in England. The decisions of the Bar Council on questions of professional etiquette form a more or less code for the Bar, and these are collected and published in a convenient form in the Annual Practice and in the Yearly Practice of the Supreme Court (e.g., Yearly Practice for 1918, vol. 2, p. 2054, "Etiquette and Practice of the Bar"). The Attorney-General does not think that a written code is desirable. Such a code could not be complete, because changing circumstances are bound to give rise to new questions from time to time."

4. From the Chairman of the General Council of the Bar. "5, Stone Buildings,

Lincoln's Inn, W.C. 2, May 26, 1919.

SIR,-

I am directed by the Chairman of the General Council of the Bar to reply to your letter of the 6th inst., and to say that, while there is no written code of ethics for the legal profession in England, the Bar Council have from time to time been asked to express their opinion on professional conduct in certain cases, and the rulings appear under the heading "Etiquette and Practice" of the Bar in the "Yearly Practice

of the Supreme Court, 1918," published by Butterworth & Co., Bell Yard, London E.C., and the "Annual Practice," published by Sweet & Maxwell, Charcery Lane, also in Halsbury's Laws of England, vol. II. p. 357, published by Messrs. Butterworth & Co., of London.

I am, sir,

Your obedient servant,

HAROLD HARDY, Secretary.

THE HON. MR. JUSTICE RIDDELL, Toronto."

5. From the Lord Chancellor of Ireland. "Lord Chancellor, Ireland,

Secretary's Office,

Four Courts, Dublin, 21st May, 1919.

The Lord Chancellor of Ireland presents his compliments to Mr. Justice Riddell and informs him, in reply to his inquiry of the 6th inst., that there are only a few rules, pertaining to retainers, for the legal profession in Ireland, and that he does not consider any further written code of ethics to be necessary."

6. From the Lord Chief Justice (Ireland).

"KING'S BENCH DIVISION, IRELAND,

Four Courts,

DEAR MR. JUSTICE RIDDELL,-Dublin, 23rd May, 1919.

There is no written code of ethics for the legal profession in Ireland,

and the necessity for one has not been felt.

Acts of professional misconduct can be dealt with in two ways,
(a) the delinquent can be brought before the Bar Council, which is chosen by and is representative of the profession, and they have power to admonish, and, in an extreme case, to refuse to accept the person's subscription to the Law Library, which would have the effect of excluding him from practice, or (b) The Benchers of the King's Inns, in cases of grave misconduct, can disbar the delinquent, subject, as in England, to an appeal to the body of Judges.

The practice which prevails here of all barristers meeting in one library—which is the centre of professional work—has the effect of creating an *esprit de corps*, and at the same time enforcing a spirit of discipline which is absent in England.

In matters of professional etiquette, we follow the general rules which have been laid down from time to time by the General Council of the Bar of England, of which I send you a copy taken from the Annual

As regards solicitors, charges against them are investigated before a Statutory Committee of the Incorporated Law Society, whose report is brought before the Lord Chancellor, with whom the ultimate decision Yours sincerely,

THOMAS A. MALONEY.

THE HON. MR. JUSTICE RIDDELL, etc."

7. From the Attorney-General for Ireland.

"IRISH OFFICE,

DEAR SIR,-22nd May, 1919.

I am directed by the Attorney-General for Ireland to acknowledge your inquiry of May 6th, and to acquaint you with the following facts in answer to the same.

No code of legal ethics exists for the Irish Bar.

The ethics of the profession are controlled by the public opinion of the Bar. The Benchers of the King's Inns exercise jurisdiction over members of the Bar in cases of violation of professional decorum? The standard of professional conduct is also reviewed by the Bar Council, but there is no coercive jurisdiction in this body.

Yours faithfully.

HUGH MONTGOMERY MILLER,

Private Secretary.

THE HON. MR. JUSTICE RIDDELL, etc."

8. From the Chairman of the Incorporated Law Society of Ireland. "Dublin, 21st May, 1919.

Mr. Robert G. Warren, President of the Incorporated Law Society of Ireland, presents his compliments to Mr. Justice Riddell, and in reply to his communication of the 6th inst., begs to say that there is no written code of ethics for the legal profession in Ireland, and the President does not approve of such a code."

From Scotland.

9. From the Lord Justice General.

"Court of Session, Scotland.

The Lord Justice General presents compliments to Mr. Justice Riddell, and begs to say that in Scotland there is no written code of legal ethics. There is, however, an unwritten code which is regarded to the legal ethics. by all Scottish lawyers as sufficient. The Lord Justice General sends herewith a lecture delivered by one of the leaders of the Scottish Bar on the subject of "The Ethics of Advocacy." This lecture contains the fullest and most exhaustive exposition of the subject known to the Lord Chief Justice General.'

10. From the Lord Justice Clerk.

"22 Moray Place, Edinburgh, 24th May, 1919.

DEAR MR. JUSTICE RIDDELL,—
I had yours of the 6th inst. We have no written code of ethics our law of practice in the matter depends on practice and tradition. I understand that the Lord President has sent you a copy of a paper by Mr. Macmillan of our Bar, which is the best pronouncement on the subject with which I am acquainted.

Our Dean of Faculty is the arbiter for our Bar in all such ques-

tions.

I must say I think it would be very difficult, and I think somewhat dangerous, to formulate a written code of ethics.

> Yours. CHARLES SCOTT DICKSON, Lord Justice Clerk."

11. From the Lord Justice Advocate.

"THE LORD ADVOCATE. The Lord Advocate presents his compliments to Mr. Justice Riddell, and begs to acknowledge receipt of Mr. Justice Riddell's letter of the 6th inst.

There is in existence no written code of ethics for the legal profes-

sion in Scotland.

There are a few rules regulating counsel's retainers which—for the convenience of the profession generally - have been more or less officially published, and are printed in the annually printed "Parliament House Book," itself an unofficial publication, but even these rules are no more than a formulation of professional custom, as instructed by the trend of decision in individual cases by the Dean of the Faculty of

I held office as Dean for several years; and, in accordance with the practice of my predecessors, I referred all cases of professional conduct which were referred to me, to solution in accordance with the simple rules of honour. Our tradition has always been that the more difficult the point is, the more strictly should the test of honourable conduct be applied. And it is obvious that the application of the rules of strictly honourable conduct consorts very ill with any attempt to reduce the rules of honour to a written code.

The Lord Advocate agrees with Mr. Justice Riddell in deprecating any attempt to frame a written code of ethics. Like Mr. Justice Rid-

dell he sees no necessity for it."

Parliament House, Edinburgh." [The Lord Justice General was good enough to send me a paper on "The Ethics of Advocacy," by H. P. Maemillan, Esq., K.C., read before the Royal Philosophical Society of Glasgow, which sets out clearly and powerfully the conception of the duty of the advocate or barrister which has always prevailed at our Bar.—W. R. R.]

Note 4.

This is not wholly original—I owe it in essence to Dr. Scott of Edmonton, who did me the honour to call upon me with Mr. MacMurchy.

Note 5.

I have conversed with many American lawyers of eminence on the subject of a written constitution, and with (I think) one exception, they have all agreed that the written Constitution (necessary as it was) has had the effect of dulling to a certain extent the perception of legislatures between right and wrong; legislators are apt to refer as a test of right and wrong to the provisions of the constitution. Whatever is not forbidden by the constitution is allowable for the legislature and executive.

Note 6.

We have only to look at the way in which many corporations are conducted to find an instance—a company will, as a rule, consider itself justified in acting in any way not forbidden by the "Companies Act."

Note 7.

I remember very early in my own practice, the late Vice-Chancellor Proudfoot, when Mr. William Kerr, Q.C. (afterwards Senator for the Dominion), advanced in argument what seemed to be an untenable proposition, saying to him, "But, Mr. Kerr, is it your own opinion that that is the law?" Mr. Kerr did not answer; he stopped in his argument, and remained silent for a moment, when the Vice-Chancellor said: "I beg your pardon, Mr. Kerr; I should not have asked that question." Mr. Kerr said, "I thank your Lordship; I was placed in an unfortunate position by the question. If I answered it in the negative, I might prejudice my client's case, if the affirmative, I would add nothing to my argument." I have never forgotten that episode, and to this day it is always an unpleasant thing for me to hear a counsel say, "I think the law is so-and-so." However earnest counsel may be, however firmly convinced of the soundness of his argument, he should remember that it is his argument the Court wishes, not his opinion.

Note 8.

This is not an imaginary case, but an actual occurrence; the solicitor resides and practices in Toronto. When speaking of possible justification, I do not suggest anything as to the facts of the particular case.

Note 9.

That the Statutes of Champerty are in affirmance of the Common Law 'may be doubted—whatever the ostensible reason for the rule, it seems to me that it is but another illustration of the apothegm, beati possidentes.

Note 10.

Of course in these cases I am considering the case of the solicitor particularly; there are reasons of prudence which may prevent the barrister from having anything to do with the subject matter of litigation or with contingent fees—but I insist the reasons are reasons of prudence and not of morals.

Note 11.

If we are to have a code of ethics, I shall be glad to do all in my power (if it be desired) to assist in formulating such a code as will be most useful to my brothers-in-the-law.

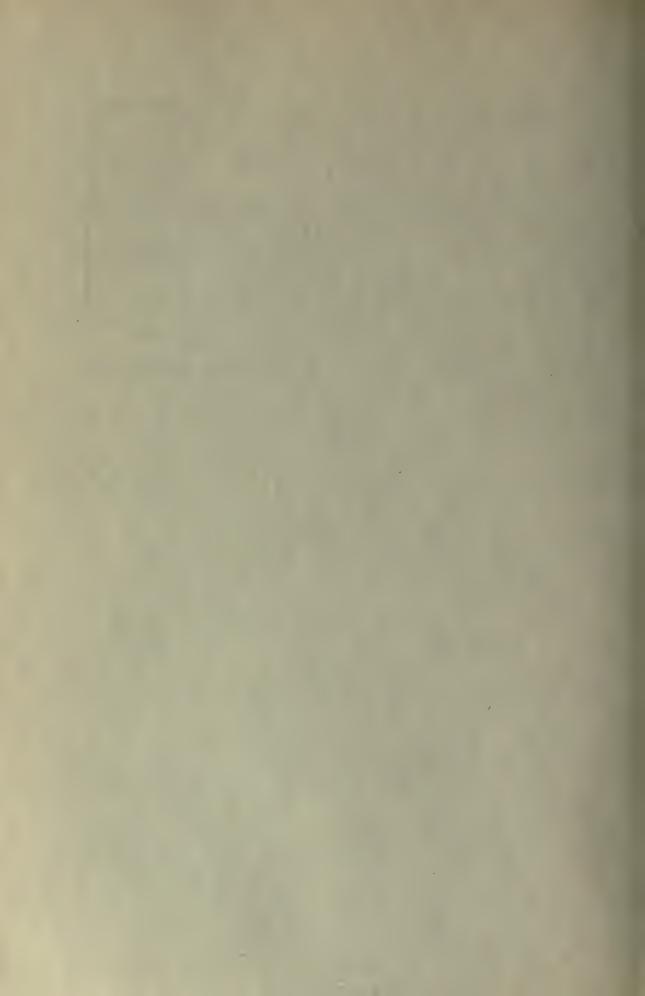
Gentlemen of The Long Robe

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THE HONOURABLE WILLIAM RENWICK RIDDELL, LL.D., F.R.H,S., ETC.

Justice of the Supreme Court of Ontario

"Show me the man and I shall show you the law." - Scottish proverb.



DEDICATION

TO

THE STUDENTS

OF

THE OSGOODE HALL LAW SCHOOL

THE HOPE OF THE PROFESSION AND, IN LARGE
MEASURE, OF THE COUNTRY,

THESE SKETCHES ARE DEDICATED

BY

ONE OF THE OLDEST OF LAW STUDENTS,

THE AUTHOR.

PREFACE

THESE papers were written in hours of relaxation and leisure from professional labours.

I recognize the truth of Bacon's saying, "every man a debtor to his profession," and I venture to hope that the present production may be a payment on account, small though it be.

It may be an inspiration to the young Barrister to read some of the story of his profession in this Province: if it assist any in any way, I shall be well repaid.

WILLIAM RENWICK RIDDELL

Osgoode Hall, Toronto, May 30, 1923.

Gentlemen of the Long Robe.

CHAPTER I.

DURING practically the whole of the French régime in Canada, law was administered much as in France; and at least for the last hundred years of that period, licences were granted by the royal representative authorizing the licencees to practise law.

For a few years after the conquest by Britain, law was in some measure administered by military courts presided over by military officers. The law was pretty much what the individual officer thought right, but French-Canadian lawyers occasionally appeared before these courts to urge the claims of their clients and the decisions were reasonably satisfactory on the whole.

After Canada was definitely ceded by the Treaty of Paris, February, 1763—Britain, it is said, reluctantly consenting to accept Canada in lieu of Guadaloupe which she really desired—a Royal Proclamation was issued October, 1763, creating a "Government" or Province of Quebec having much the same extent as the present province but extending westward to a line drawn from the south end of Lake Nipissing to the point at which the 45th parallel crosses the St. Lawrence River (near the present Cornwall.)

This Proclamation introduced the English law, civil and criminal; and the latter has ever since been in force except as modified by local legislation.

The Régime Militaire speedily came to an end, and civil courts were organized without undue delay. But the English system of legal practitioners was not introduced. In England there were barristers who were called to the bar by one or other of the Inns of Court, attorneys admitted by the courts of Common Law, solicitors admitted by the court of Chancery and proctors in the Admiralty and Ecclesiastical courts. While there was no legal objection to any of the three last named filling two or all of these positions, no barrister could be attorney, solicitor or proctor. There were also notaries public appointed by the Archbishop of Canterbury.

The English Governors of Quebec followed the former French system, which was indeed the system also in England until the time of the Edwards, and kept in their own hands the right and the power of granting licences for these professions. We find licences granted to some as barristers, some as attorneys, some as notaries public and some to fill two or more of such offices.

These licences were granted on petitions or memorials by the applicants—many of them are still extant—and the Governor selected the licencees at will. It was a system of open and plain favoritism; no educational or other qualification was required and it had the advantage claimed by a well-known Englishman for the Garter, there was "No d—d merit about it."

As early as 1774, the well-known Quebec Act reintroduced the earlier French-Canadian law in civil matters; this Act also extended the boundaries of the Province of Quebec along Lake Ontario, the Niagara River, the south shore of Lake Erie to the western line of Pennsylvania, then south to the Ohio River, down that river to the Mississippi and up the Mississippi. Thus, all of what is now the Province of Ontario was brought into the Province of Quebec.

The system of administration of the law was not changed; the Governor continued to issue licences as before.

In 1779 there was organized at Quebec, by the practising lawyers, a society known as "La Communauté des Avocats" (the Barristers' Society); and this Society had much to do with the change of the system of licensing practitioners. There was much dissatisfaction among the lawyers with the number of applicants and, it is fair to say, more with their qualifications—the existing system was quite as unsatisfactory as the practice of legislatures making lawyers by Act of Parliament, something utterly unknown in England.

At last in 1784 matters came to a head. Alexander Dumas of Three Rivers, a man advanced in years, a bankrupt merchant and a notary public, whose conduct in his office had not been wholly creditable, petitioned Sir Frederick Haldimand, the Governor, for a licence as advocate (barrister). Haldimand determined to separate the professions of advocate and notary public; the union of these in one person he considered to be one of the chief causes of the very great amount of litigation; but he left the Province in November, 1784, without having carried his plan into operation. His lieutenant, Henry Hamilton, was called upon to deal with Dumas' petition; the Communauté hearing of the application, protested to Hamilton on the ground both that there were too many advocates already and that Dumas was of bad character. Hamilton apparently did not know that Haldimand had determined to refuse a licence as advocate to a notary public and vice versa (for he was very loyal to Haldimand); he disregarded the protest of the lawyers and gave Dumas a licence as advocate in addition to his existing licence as notary public.

Dumas presented his licence to the Court of Common Pleas to be filed; before this, however, James Monk, the Attorney-General, and M. Panet, speaking in English and French respectively, moved in the name of all advocates that they might be allowed to file reasons for the exclusion of Dumas, ". . . sur l'information des vie et moeurs du sieur Alexandre Dumas aspirant à la profession d'advocat" ("having regard to the information concerning the life and conduct of the said Alexander Dumas who seeks to become a barrister"). The court referred the matter to the Governor. Hamilton orally directed the court to disregard the motion and register the licence; and this was done. Governors actually governed in those days when kings still considered themselves kings by the grace of God.

But this was the cap-sheaf; the next year, April 30, 1785, Hamilton signed an Ordinance separating the profession of notary public on the one hand from that of barrister, advocate, solicitor, attorney or proctor on the other, and requiring anyone who wished a licence for the latter profession to serve five years under articles and pass an examination. This system still prevails in our sister province but not with us in Ontario—the notary public is not in our law by any means such an important officer as in the French law or other law derived from the Civil Law of Rome, and we see no objection to a barrister or solicitor being also a notary public.

The system instituted by the Ordinance of 1785 was that in existence when the old Province of Quebec was divided into the provinces of Upper Canada and Lower Canada in 1791.

In the Matter of Garb

The profession of the law being thus organized, it was not long before attention was paid by the courts to the official garb.

Even before this, however, the matter had not been wholly neglected; the Communauté in 1779, in the first article of the second section of the first chapter of its Statutes enacted that its members should appear in court in black coat

and gown and bands. This injunction being disregarded, it was resolved in December, 1780, that it should be enforced; after being suspended for a time, at the request of the Attorney-General, James Monk, an order was made April 21, 1781, that advocates should wear in court, black coat, waistcoat and breeches (la culotte) on penalty of five shillings for breach of the order. From that time, as M. J. Edmond Roy tells us in his delightful book "L'Ancien Barreau au Canada," convictions began to rain thick and fast—"à pleuvoir dru."

Maître Olry, the dean of the bar, was the first to fall a victim-he appeared in court without a black coat and his excuse that he was a party to the action and appeared as such and not as an advocate availed him naught; June 11, 1781, he was fined 5 shillings. The same day another advocate, Maître Pinguet, had the same fate for appearing in court without a black coat, although he was not professionally engaged! The next year Maître Cugnet went into court three times with breeches which did not match-"en culotte dépareillée"-five shillings; Cugnet, one of the handsomest men of his time, was a frequent offender; he objected to the garb of an undertaker's man (croque-mort) and had to pay a fine once for pleading in a colored coat and again in flesh-colored nankeen breeches. In 1784 Maître Panet was called to task for appearing before the Council in a grey coat. The French brethren were not the only offenders; the English-speaking were as bad. Mr. Stewart appeared in a white vest, but pleading ignorance of the rule he was forgiven for this time; a year after he appeared in a colored coat and this time, "cinq chelins"-Russell had the same fine for the same offence. This gentleman, Irish it would appear, became still more daring. In 1785 he appeared in the Court of Appeal in a colored coat and, horresco referens, with his hair without a ribbon; the President administered a grave rebuke and ordered him to apologize and to pay "les eternals cinq chelins." The "everlasting five shillings" did not effect the required result, and at length the Court of King's Bench in March 5, 1787, made a rule that "at every future term of this court, the officers thereof wear the dress of officers of the like employment in the King's Bench of Westminster Hall nearly similar thereto and that the practitioners of the court appear in gown and band worn by those gentlemen who are now called to the bar." At Westminster Hall the garb was as at present—the same as ours, but with the wig which was never adopted in our part of Canada; it was said that the bar of England went into mourning on the death of Queen Mary and never came out of it. After this we hear of no more irregularities in garb; the gown and band have continued to be worn in the Lower Provinces until this day. In Upper Canada, the band disappeared from the garb of the stuff gownsman but was retained by the King's Counsel. It has again made its appearance within the past few years and is now almost universal.

The Communauté did not restrict its rules to court garb; one of its rules provided that on the death of a member, the survivors should attend the funeral and wear mourning for eight days.

Lawyers Must Mourn Properly

In 1782, William Barclay Scriver, an Irish lawyer who nad been a few months at the Quebec bar, died. The same Maître Panet, who was to plead later on in a gray coat, attended a meeting in buckled shoes and silver garters. This splendor shocked the brethren, and they adopted another rule that mourning should consist of black coat, vest, breeches and stockings with black buckles, and no powder or diamonds during eight days, crape obligatory only on the day of the funeral.

The judges of the Court of King's Bench in old Quebec wore the ermine robe; those of the Court of Common Pleas the same as the bar. The judges of our

Upper Canada Court of King's (or Queen's) Bench and Court of Common Pleas (established in 1849) always wore the robes of the King's Counsel except in term when until quite recently they wore a parti-colored gown. Now all the judges in Ontario at the trial or on appeal wear the same garb as King's Counsel—the late Chief Justice Armour is generally given the credit for bringing about this simplification. The judges in the Court of Chancery never wore the particolored robe (the late Chancellor Sir John Boyd never wore the band.)

The judges in the old Province of Quebec and the Province of Lower Canada were addressed as "Your Honour." That custom prevailed in the Lower Province until near the end of the 19th century, when the address "Your Lord-

ship" or "My Lord" was adopted.

In Upper Canada the title "Your Honour" was used until the time of the Chief Justiceship of Sir John Beverley Robinson, when the English system was adopted generally. The title "Your Honour," curiously enough, is still appropriate for dignitaries above and below justices of the Supreme Court, i.e., the Lieutenant-Governor and the judges of the County Courts.

During the latter part of the Revolutionary War and more especially after the treaty of 1783, which acknowledged the independence of the revolting colonies, the vast territory now Ontario received many immigrants from the South. Those who had kept their faith to the Crown came into our wildernesses. The whole of this territory was in the District of Montreal and all litigation must needs be carried on in the city of Montreal. After a palliative and temporary measure, Lord Dorchester, in 1788, divided this territory into four Districts, Luneburg, Mecklenburg, Nassau and Hesse-there was at the time an affection for German names in compliment to the King, and Germany had not then displayed her true colors. In each District Dorchester erected a Court of Common Pleas with full civil jurisdiction and over each Court set three judges. all laymen. There were no lawyers in the country, and even had there been it is by no means certain that they would have been appointed to the Bench. In the old Province of Quebec, there were few lawyers placed on the Bench of the Courts of Common Pleas; army officers and doctors had the preference. Perhaps the best known and certainly the most influential and active judge for a long time was Dr. Mabane, educated at Edinburgh in medicine, an army surgeon and in charge of the hospital at Quebec-"Magistrat à Québec et sage femme à Edimbourg, c'est là qu'il a pris ses grades de Docteur en Jurisprudence française dans les Ecoles de Chirurgie" ("Magistrate at Quebec and midwife at Edinburgh, where he took his degrees of Doctor of French Jurisprudence in the Surgical Schools.") The people at Detroit strenuously objected to lay-judges, and Dorchester sent them a lawyer, William Dummer Powell, afterwards Chief Justice of Upper Canada, as first and only judge of the Court of Common Pleas in the District of Hesse. In Powell's court there was one practising lawyer, Walter Roe; in none of the other three was there a resident practising lawyer, but in Luneburg and Mecklenburg occasionally a lawyer from Montreal made his appearance. The records of the court of the district of Nassau (around Niagara) are not extant but it is certain that there was at that time no lawyer resident there.

Only One Lawyer in Upper Canada Then

When in 1791 the old Province of Quebec was divided into the Provinces of Upper and Lower Canada, in the former province there was one lawyer only, Walter Roe. He was the son of a resident of London of some means; he could not agree with his stepfather and went away to sea. He sailed for some years and at length attracting the notice of a captain by his ability and intelligence he was urged by the captain on his arrival at Montreal to study law. He did

so, and received a licence to practise law in April, 1789. He left for Detroit at once (possibly with Powell) and there he practised until the abolition of the Court of Common Pleas in 1794 and for two years afterwards. He left Detroit in 1796 when that place was surrendered to the Americans under Jay's Treaty; he is said to have himself delivered the keys of the Fort to the American Commander. He came to the Canadian side of the river and was in 1796 made Register for the Western District; he also continued to practise law and in 1797 was Called to the Bar by the newly created Law Society of Upper Canada and was made a Bencher. The original small bar of one was augmented by the arrival of John White, the first Attorney-General of the Province, in the summer of 1792.

White was an English barrister, probably of the Inner Temple. Called in 1785, he practised for a time in Jamaica, but not succeeding there he returned to England and lived for a time in Wales, intending to take Holy Orders. But Samuel Shepherd, who had married his sister, recommended him to William Osgoode, who had been appointed Chief Justice of Upper Canada, and Osgoode secured his appointment as Attorney-General in the new Province of Upper He became a member of the First Legislative Assembly and had a creditable record as such. He was not a great lawyer but he filled the office of Attorney-General to the satisfaction of the Lieutenant-Governors, Unfortunately he quarelled with Major John Small, clerk of the Executive Council, was challenged to a duel and received a fatal pistol wound on "the field of honour," January, 1800. At his own request he was buried in his own garden near Bloor St., east of Sherbourne St., Toronto (then York). "I desire to be rolled up in a sheet and not buried fantastically, and that I may be buried at the back of my own house," his will, made the day before the duel, runs. In 1871, laborers digging for building sand disturbed his bones and Clarke Gamble, Q.C., the Nestor of our bar, had them reverently reinterred in St. James Cemetery, lot 90, block 1. July 29, 1892.

So long as the Courts of Common Pleas existed there was no real need of lawyers to draw the proper pleadings. The practice was simple (very like to that in our Division Courts) devoid of technicalities and such as any literate suitor could attend to himself. But Simcoe, the first Lieutenant-Governor, was almost fanatically attached to everything English. His Chief Justice and Attorney-General were both English barristers, and it is no matter for wonderment that soon the English system of jurisprudence was introduced. An Act was passed in 1794 abolishing the Courts of Common Pleas and establishing a single Court of King's Bench for the whole Province, with a practice almost the same as in England.

This meant the employment of lawyers, and the Legislature knew it.

Accordingly a statute was passed with a view of increasing the number of those entitled to practise law above the small number, only two, already licensed. It may astonish some to learn that there ever was a time in this province when there was a scarcity of lawyers. But, in 1794, the Legislature thought so—or at least said so. The Act recites "whereas much inconvenience may ensue from the want of persons duly authorized to practise the profession of the law in this Province," and authorizes the Lieutenant-Governor to grant a licence as advocate and attorney to not more than sixteen of His Majesty's liege subjects, such as he might deem best qualified by their probity, education and condition in life to act as such and these persons should have the sole right to practise in the courts of the province, the Secretary of the province to receive 40 shillings for each licence and the clerk of the Court of the King's Bench 13s. 6d. for entering each on the roll. The clerk was to enter gratis the names of those already entitled to practise, i.e., Roe and White.

CHAPTER II.

Licence to Practise After 1794

IT SHOULD be noticed that the Legislature of Upper Canada by the Statute of 1794 brought back the original English system which had ceased for centuries in England and which prevailed in British Canada only from 1763 till 1785. The Act placed wholly in the discretion of the Lieutenant-Governor whom he should consider best qualified to act as advocates and attorneys; and while he was supposed to exercise his judgment from their probity, education and condition in life, there was no check on that judgment and he could say—sic volo, hoc jubeo.

Simcoe, the Lieutenant-Governor, was a man who knew his own mind and was little given to asking or taking advice, and it is quite certain that the selections made were his own choice. The Lieutenant-Governor received a number of memorials from those aspiring to be practitioners—some of which he acceded to, some he refused. On the very day of the Prorogation of the Legislature, July 7, 1794—the date is given as July 9 in the first extant printed copy of the statute but that is certainly a mistake—three gentlemen were licensed under the Act—David William Smith, Richard Barnes Tickell and Angus Macdonell (as the name is now always spelled, although he signed the Roll as McDonell).

The appointment of Smith seems to have been honorary—he did not pretend to know any law and there is no record of his ever practising. Moreover, what is very significant, his licence, which is copied in the King's Bench Term Book No. 2, forbade him to take "a clerk or clerks by way of qualifying him or them to appear or act as an advocate or attorney." He was the only son of Lieutenant-Colonel John Smith of the Fifth Foot, who had been in command at Detroit and in 1792 had taken command at Niagara. The son was born, September 4, 1764, and had lived nearly all his life with the Regiment, becoming a Lieutenant at 17 years of age. During his service in the Regiment he was so fortunate as to win the friendship of Lord Percy, who afterwards became the Duke of Northumberland. In 1794 Smith was still an officer in the 5th; it is not quite certain that Simcoe had a previous acquaintance with him, but in any case Simcoe became a friend. Smith was appointed Deputy Judge Advocate at Niagara and afterwards acting Surveyor-General—the Home authorities at that time and for many years afterwards paid the salaries of the officers of the Province and they objected to a separate Surveyor-General for Upper Canada, so that the Surveyor-General for Lower Canada was Surveyor-General for Upper Canada as well. It is not without interest to note that Smith was the first to open a Register for meteorological, barometrical and thermometrical observations (August, 1794) and to invite communications on the subject from the public. Dr. Nooth, whom La Rochefoucault calls Dr. Knott, an army doctor, made observations of this kind at Quebec, but this was for his own amusement only.

Smith was elected a Member of the House of Assembly of the First Parliament in 1792 for Suffolk and Essex, for the Second Parliament in 1796 for a certain Riding of Lincoln, and became Speaker for this Parliament. He was also Speaker of the House of Assembly for the succeeding Parliament in 1800, when he was elected for Norfolk, Oxford and Middlesex. He became an Executive Councillor in 1796. Finally he resigned his office and went to England to live, alleging ill health; he was granted a pension of 200 l., payable out of the Civil List for Upper Canada. His old friendship with the Duke of Northumberland stood him

in good stead; the Duke made him manager of his estates; he was created a baronet in 1821 and died at Alnwick in May, 1837, aged 73. His only son by his first marriage who attained maturity—he had three children who died in infancy—David William, of H.M.S. Spartan, was killed in action. He had other children who survived him but the baronetcy seems to be extinct.

Other Legal Pioneers

The Statute enacted that a roll should be provided for the purpose of enrolling the names of those receiving licences and kept among the records of the Court of King's Bench. Such a roll was in fact provided; it is made of parchment and is still preserved among the records at Osgoode Hall. The Statute did not require oaths to be taken by those enrolled; but an English statute of 1702 did, and accordingly when a licencee appeared to be enrolled he was required to take the oath prescribed. All were obliged to take the usual oath of allegiance, which was as old as the Common Law itself, and all but Roman Catholics the oath, "that I do from my Heart abhor, detest and abjure as profane and heretical that Damnable Doctrine and Position that Princes excommunicated or deprived by the Pope or any Authority of the See of Rome may be deposed or murdered by their subjects or any other whatsoever. declare that no foreign Prince, Person, Prelate, State or Protectorate hath or ought to have any Jurisdiction, Power, Sovereignty, Pre-eminence or Authority Ecclesiastical or Spiritual within this Realm." This drastic oath was prescribed at the time of the Revolution of 1688 in place of another, also sufficiently drastic if not so specific, prescribed by Parliament when Queen Elizabeth attained the throne after the death of her Roman Catholic sister Queen Mary, often spoken of with a vituperative epithet, as to the justice of which opinions naturally differ.

Another oath was that against the Pretender and the House of Stewart generally, affirming the sole right of "the Princess Sophia, Electress and Duchess Dowager of Hanover and the Heirs of her Body, being Protestants"—this was called for by the Statute passed in 1714, the first year of the reign of the first King of England of the House of Hanover, King George I, and slightly modified in 1766.

All these oaths David William Smith took and he was then addressed by David Burn, Clerk of the Crown, who administered the oath, "You are called to the Degree of an advocate and to that of an attorney to protect and defend the rights and interests of such of your fellow citizens as may employ you: You shall conduct all causes faithfully and to the best of your ability: You shall neglect no man's interest nor seek to destroy any man's property: You shall not be guilty of champerty or maintenance: You shall not refuse causes of complaint reasonably founded: Nor shall you promote suits on frivolous pretences: You shall not permit the law to favor or prejudice any man: But in all things shall conduct yourself truly and with integrity. In fine the King's interests and your fellow citizens' you shall uphold and maintain according to the constitution and laws of the province."

The advocate and attorney was required to answer: "All this I swear to observe and perform and do to the best of my knowledge and ability"—he was sworn and thereafter was a fully fledged practitioner.

Richard Barnes Tickell was admitted in the same way; he is almost unknown to fame. He had some practice, appearing in the Court of King's Bench twice in Hilary Term, January, 1795, once, Easter Term, April, of the same year, but then disappearing from view.

The third who received a licence was quite different in several respects from the other two. Angus Macdonell was of the well-known Glengarry family of

the name—a family which since swearing fealty to the Sovereign of the United Kingdom has furnished warriors for every field and civil servants in every capacity, all faithful unto death—and its valour and loyalty have not diminished to this day. His father, Captain Allan Macdonell, married the sister of the Laird of MacNab and in 1773 came with his wife and family to the Colony of New York at the instance of the celebrated Sir William Johnson, settling in Tryon County in Mohawk Valley, which was still loyal and remained loyal during the Revolution. Macdonell became an officer in the loyal forces and when the cause was lost, came to Glengarry, losing his horse, cows and furniture.

The son Angus became Clerk of the First House of Assembly in 1792 and continued in office on the election of the Second, 1796; there was a petty storm in a mustard pot, the merits of which are now hard to discover, and he was dismissed in 1801 but received the thanks of the House for his services and was acquitted of any imputation of irregular conduct. He then himself (1801) became a Member of the House of Assembly representing Durham, Simcoe and the East Riding of York including what is now Toronto. In that capacity he tried to have the old name Toronto again applied to the place which had received the name of York from Simcoe; but in vain.

He had a very large practice not only in his own cases but also as agent and counsel for outside lawyers before the Court of King's Bench. He had removed to York from Newark (Niagara on the Lake) with the Parliament in 1797 and continued to reside here until his death. He went down with the Provincial schooner "Speedy" in 1806 in the shocking disaster, the story of which has been told so often. It will bear another repetition here.

The Sinking of the "Speedy"

The Farewell Brothers of Port Whitby were fur traders and made occasional visits to the Indian tribes in the back country. On one occasion, leaving their servant, John Sharp, in their camp on Washburn Island, Lake Scugog, while they went to visit an Indian camp, on their return they were horrified to find his dead body. He had been murdered. Trailing the aggressor they found that he had joined an Indian band and come with the band to the Perinsulanow Toronto or Hiawatha Island (the Eastern Gap was broken through by a storm in the 50's). It was found that his name was Ogetonicut and that, his brother Whistling Duck having been killed by a white man, Cosens, the previous year, Ogetonicut threatened vengeance, and it was plain had killed the first white man he had the opportunity of surprising. He was arrested and placed in the gaol at York; but it was found on a careful survey that the place at which the deed had been committed was a short distance east of the boundary line between the Home District (of which York was the District Seat) and the District of Newcastle and consequently within the latter District. It was therefore necessary that the prisoner should be tried in the District of Newcastle. Cobourg was later on the District Seat of the District of Newcastle, but at this time, 1804, the District Seat was the small town of Newcastle on Presqu' Isle Point, now quite disappeared. There was a sort of a road built by Asa Danforth from York eastward, in the last years of the 18th and the first of the 19th century, (still in parts known as the Danforth Road) but the Lake was by far the better "King's Highway." Accordingly a Government schooner, the "Speedy," was assigned to take the prisoner and others from York to Newcastle. The Captain, Paxton, protested that she was not fit to sail, but his objections were overborne and Mr. Justice Cochran, who was the Assize Judge, Robert Isaac Dey Gray, the Solicitor-General, who was to prosecute, Angus Macdonell, who was to defend the Indian prisoner, two Indian interpreters, George Cowan and James Ruggles, John Fishe, the High Constable of York, John Anderson, a

Student at Law—he had been admitted as a student in the Law Society of Upper Canada in Hilary Term, 1803, and was the first student not to finish his course and receive his Call—alas there have been many during the late terrible years—Jacob Herchmer, a merchant of York, and some witnesses went on board as passengers; five seamen with Captain Paxton manned the little craft. Opposite what is now Lakeport the schooner was seen battling against the storm; then she disappeared with passengers and crew, spurlo3 versenkt. Even a hen coop, which is said to have come ashore after the tragedy, cannot be absolutely identified with the unfortunate vessel. Thus died Angus Macdonell, October 7, 1804. But this was far in the future when in July, 1794, he presented his licence as advocate and attorney.

He was a Roman Catholic like all his near kin, and of course he could not take all the oaths which Smith and Tickell took. But however fixed—bigoted if you will—England was in her sea-girt Island, she knew how to relax when circumstances indicated the wisdom of such a course. Moreover in spite of the denunciations of those whose patriotism consists not so much in love of their own country as in hatred of England, she has always desired the good of her colonies and has been willing to go great lengths to meet their supposed needs. Sometimes she was not happy in her manner of expressing herself, but she always desired the love and loyalty of the inhabitants of her possessions and to deserve them.

An Experiment in Privileges

When Canada became British, it was to be feared that tragedies such as that of Acadia would ensue-some of the immigrants from the colonies to the south and some from the Mother Country were not very creditable specimens of their country and they acted or tried to act the tyrant's part and to play the conqueror. The Governors recognized the real value of the French Canadian; for example, Murray in a well known despatch says that the Canadians were "perhaps the bravest and best race upon the globe, a race who, could they be indulged with a few privileges which the laws of England deny to Roman Catholics at home, would soon get the better of every national antipathy to their conqueror and become the most faithful and most useful set of men in this American Empire." It was determined to try the experiment of indulging the Canadian with a few privileges-nowadays we should probably call them rights, but tempora mutantur—and the Quebec Act of 1774 was accordingly passed. This, by section 7, relieved Roman Catholics in the Province from the Elizabethan oath and its substitute in King William's time and prescribed an oath which the Roman Catholic could take without violence to his religion—it was a simple oath of allegiance without equivocation and renouncing all dispensations from it. Thus the Province of Quebec, which at that time it must be remembered, included what became Upper Canada, was the first British possession since the Reformation which allowed members of Parliament, barristers, etc., to be loyal to the Church of Rome without penalty.

This was the oath which Angus Macdonell, a faithful Roman Catholic, took when he was admitted an advocate and attorney in July 1794, and opposite his name, Burn entered "R. C., 14th Geo. 3," to show what oath he had taken.

Some Other Lawyers

A few days afterwards James Clark had his licence.

He was a native of Scotland who came to America in 1772 and settled on Otter Creek, Vermont. On the outbreak of the Revolution he joined General Burgoyne's forces (1777) at Crown Point and afterwards served with Sir John Johnson; after the peace he came to Montreal and then to New Johnstown

(Cornwall). A man of some education and much force of character he was made one of the first judges of the Court of Common Pleas in the District of Luneburg but did not act after July, 1789. He removed to Newark and in 1793 became Clerk of the Legislative Council; in July, 1794, he received a licence as advocate and attorney and had a large practice in the Court of King's Bench. He does not seem to have come to York with the Court and he did not appear at

any meeting of the Law Society after 1807.

Then came Allan McLean on the same day—also of Scottish descent. He came from the District of Mecklenburg—the Kingston district—and was a very active practitioner. He was afterwards in 1804 elected for Frontenac in the House of Assembly in the Fourth Parliament and re-elected for the Fifth and Sixth, becoming Speaker of the House of Assembly in the Sixth as also in the Seventh. He was re-elected member in the Eighth, but was defeated in a contest for the Speakership by Levius Peter Sherwood, of whom we shall hear later. He had much business ability and was chosen more than once to settle the financial arrangements between the two Provinces. He does not appear in the Legislature after 1821.

Timothy Thompson received his licence, July 20; he was a United Empire Loyalist who had served during the Revolutionary War as an ensign in the King's Royal Regiment of New York. After the war he came to South Fredericksburg in the Bay of Quinte region and had a farm near Conway. He does not seem to have practised much but was a person of great influence. Elected member of the House of Assembly in Second Parliament (1799) he was reelected in 1800, but disappeared at the next election in 1805. His constituency was Lennox, Addington and Hastings, but he was a Justice of the Peace for the District of Newcastle (Northumberland and Durham) and often acted as Chairman of the Quarter Sessions in that District.

An Interesting Figure

We now come to one of the most interesting characters in our early history. Robert Isaac Dey Gray. The son of Major James Gray, a retired officer, he was educated at Quebec. He studied law with Jacob Farrand, whom we shall meet later, but did not at the time pass examinations or receive a call. family had much local prominence and influence and he was appointed Register of the Surrogate Court for the Eastern (Luneburg) district in 1793, which position he held till 1800. He attracted the attention of Simcoe, who took great interest in him. It was not long after he received a licence as advocate and attorney, October 22, 1794, that he was elected a member of the House of Assembly for Stormont for the Second Parliament, 1796. In that year Simcoe, before leaving for England, recommended that Gray should be appointed Solicitor-General; this he did, as he himself says in a dispatch, that Gray might make enough money to enable him to take a course of training for the Bar in England and thereby fit himself for high office. Except for a little "honest graft," there was no need for a Solicitor-General at that time. The warrant for the appointment did not arrive till July, 1797. Gray was a very useful legislator; in 1798 he fought with vigor the attempt to repeal the act of 1793 abolishing slavery in the Province and in other respects deserved well of the country-he was also for a time Judge of the District Court of the Home District.

On the death in 1800 of John White, the Attorney-General, in a duel, Gray expected to be appointed to the vacant office. The Governor, Peter Hunter, did instruct him to take charge of the office pro tempore, but reported to the Secretary for Colonial Affairs that Gray was a very young man, not possessing sufficient professional knowledge, and asked for an English barrister. After some delay, Thomas Scott, afterwards Chief Justice of the Province, was sent out.

In October, 1804, Gray was instructed to prosecute the Indian Ogetonicut. He arranged with William Weekes, another lawyer, that they should ride on horse-back together from York to Newcastle, but the Judge persuaded Gray to accompany him on the "Speedy" and the Solicitor-General shared the fate of the Judge.

The Last of the Slaves

One interesting fact may be here mentioned: Gray owned a slave, Dorinda or "Dorin" as he sometimes calls her, of whom he was very fond, so much so indeed that on a visit to Albany he had bought her mother so that the child might have the company of her mother; in his will he set free Dorinda and all her children. One of them, John Baker, was Gray's body servant and Gray left him 200 acres of land, Lot 17 in the 2nd Concession of Whitby. Baker afterwards entered the employ of Mr. Justice Powell. Whiskey was cheap and John was fond of it. Whenever he got drunk he enlisted and when he got sober he rued and got his employer to procure his discharge. Powell got tired of this after a time and warned Baker that next time he would not get him discharged. There was a next time; Baker remained a British soldier, went across the Atlantic, took part (it is believed) in the battle of Waterloo and returned to Canada. He lived in Cornwall until his death in 1871, the last survivor of those who had been slaves in Canada.

CHAPTER III.

Some Other Early Lawyers

Jacob Farrand, cousin of Gray, was born in New York Colony in 1763. A Loyalist, he became an officer in the King's Royal Regiment of New York and did good work during the Revolutionary War. He settled in the Eastern District and acted in the Court of Common Pleas in that District—the same as the District of Luneburg, the name was changed by Parliament in 1792—as an agent for litigants and is said to have had a good knowledge of law. He was Clerk of the Peace for that District from 1788; Register of Stormont and Glengarry from 1796 and of Dundas from 1800, all of which offices he held till his death in 1803. His body lies in the graveyard adjoining the Bishop Strachan Memorial Church. His descendants are still to be found in that neighborhood, the late Judge Pringle having been a grandson.

Nicholas Hagerman, a United Empire Loyalist, was born on this continent of Dutch descent, came to Canada after the war and settled in the Township of Adolphustown—Hagerman's Point. September 29, 1794, he delivered a memorial to Simcoe asking for a licence and received it, October 26. He had a large practice but was not so great a counsel as his more celebrated son, Christopher Alexander Hagerman. The two met more than once as antagonists when Christopher was in practice at Kingston. The story is told that once when the son was successful, the father exclaimed, "Have I raised a son to put out my eyes?" To which the son replied, "No, to open them, father."

William Dummer Powell, the second son of Mr. Justice William Dummer Powell, was born in England in 1778. He came with his mother to Canada in 1780 and was captured on the voyage by an American privateer, but the party made their way before long to the father at Montreal. He went with his father to Detroit in 1789 and received his early education at home; for a time he was at school in England. After receiving his licence he practised at St. Catharines. His runaway marriage in 1801 to Sarah Stevenson is one of the romances of our early history. The parents opposed the marriage and the elopement was managed by Mr. Nellis. "He died," as his mother writes in the Family Bible, "September 29th, 1803, under circumstances aggravating the anguish of his unfortunate mother and is buried in the Presbyterian burying ground at Stamford, Dorchester."

Alexander Stewart sent in a Memorial, October 6, 1795, to Simcoe, which, as it states his claims and illustrates the form of such papers, is here given in full:

To His Excellency John Graves Simcoe, Esquire, Lieutenant-Governor of the Province of Upper Canada, Major-General and Commanding His Majesty's Forces therein, etc.

The Memorial of Alexander Stewart, Lieutenant in the late King's American Dragoons,

Respectfully showeth,

That at the beginning of the late Rebellion in America your Memorialist with many of his connections, from motives of loyalty, joined the British Army, where from the age of seventeen to twenty-four Your Excellency's Memorialist served his Sovereign, by means of which he lost the opportunity of obtaining a knowledge of the Law for which he was originally intended.

That your Memorialist went with the Army to Nova Scotia where, after several years' stay, hearing of Your Excellency's appointment to this Government, he made every exertion to remove to it.

That your Memorialist has since been at some pains and no little expense (too heavy for the stipend of a half-pay Subaltern) to revive his forensic ideas and obtain such legal knowledge as might enable him to obtain a decent livelihood in a Government at the head of which was placed your Excellency.

Your Memoralist therefore most humbly prays that Your Excellency would please to take his case into consideration and grant him a licence to practice as an Attorney in the Courts of Record within the Province.

And your Memoralist, etc., etc. Newark, 6th October, 1795.

Stewart obtained a licence November 6, 1795; he appeared in the Court of King's Bench the following year and had a very active practice until 1809.

Davenport Phelps was rather inclined to theology than to law, a friend of Brant's but making no mark in our jurisprudence. He did not even sign the Roll and therefore he was not technically qualified to act as attorney or advocate and probably did not so act.

In 1796 were admitted Charles J. Peters and William Birdseye Peters as well as Samuel Sherwood.

Samuel Sherwood was the son of Justus Sherwood, a Loyalist originally of Connecticut but settled in Vermont in 1774. He came to the Township of Augusta near Prescott in 1784. Samuel was left behind in Montreal to study law with "Lawyer Walker." After receiving his licence in 1796 he had a somewhat active practice. He became a Member of the House of Assembly 1801 for Grenville, being re-elected in 1805, 1809 and 1812. He was accused of sedition during the war of 1812 on no better evidence than advising resistance to unlawful military actions. In 1812, he with his brother, Levius Peters Sherwood, and Dr. William Warren Baldwin defended those sent down from the Western Country by Lord Selkirk. The defence was well conducted and successful.

Such were the men who received licences under the extraordinary Act of 1794; and they were the Members of the Bar along with John White and Walter Roe until the Law Society of Upper Canada was formed in 1797.

The Law Society of Upper Canada

It has already been noticed that the Crown had, in England, abandoned for many centuries the issue of licences to practise law; the system introduced into Upper Canada by the Statute of 1794 was, therefore, wholly anomalous and un-English. It turned out not to be satisfactory to anyone except those who were favoured with a licence, and even to them the popular gibe of "heaven-born lawyers" was unpalatable.

In 1797, it was determined to bring the provincial system in line with English practice, and thus not only dignify the profession, but also render it more useful to the public.

The Legislature in the first session of the Second Parliament, the first session held at York (now Toronto), passed an Act for the better regulating the Practice of the Law, commonly known as the Law Society's Act, which has had a very great influence in elevating the status of the profession, and also in furnishing a model to be, in the more or less remote future, followed in legislation respecting other professions.

The Act authorized those at the time admitted to practise law and actually practising at the Bar, to form themselves into a society to be called the Law Society of Upper Canada—they were not incorporated but were permitted to form a Society. It may be here stated, somewhat in anticipation, that in 1822 the Treasurer (i.e. the Head) and the Benchers (i.e. the governing body) were incorporated under the same name; but the Law Society of Upper Canada authorized by the Act of 1797 continued and still continues to subsist; and all barristers and students-at-law in this province are members of it.

The Law Society of Upper Canada was empowered to make rules and regulations, to appoint governors or benchers, a librarian and a treasurer—the rules and regulations to be subject to the approval of the Judges as Visitors of the Society. Any person then practising was allowed to take one student; and no one other than those then practising or thereafter called and admitted by the Society to the practice of law as barristers should be permitted to practise at the Bar in any Court within the Province. An exception was made for those called to the Bar in the British Isles or a British American Colony; these, until 1822, the Judges might admit to practice (as a fact they never did); but, after 1822, they also had to be called by the Law Society. In 1885, a Mr. de Sousa, who had been called to the English Bar, but who was not admitted by the Law Society here, claimed the right to plead at our Bar but the Court held that they had no power to allow it. Since the formation of the Law Society there never has been an instance of any one acting as a Barrister in a Provincial Court unless he had been called to the degree of Barrister-at-Law by the Law Society.

The Act provided that no one was to be called unless he had been on the books of the Society and had been a student of the laws for five years. This has since been relaxed in favour of graduates in Arts or Law of a British University to three years.

But anyone who had been on the books for three years might be permitted (by the Court, not the Society) to practise merely as an Attorney or Solicitor—there was no Court of Chancery, and therefore there were no Solicitors until 1837; but, during almost the whole of the Province's separate life, the project of erecting a Court of Chancery was more or less in contemplation.

An attempt to introduce the English rule, whereby no one could be both Barrister and Attorney, made by John White the Attorney-General in 1800, was defeated by the other Benchers; another attempt, in 1831, was vetoed by the Judges, and the third and last was defeated by the Legislature in 1841. Accordingly we differ from England in permitting the same person to be both Barrister and Attorney (now Solicitor) and from the United States where most of the States do not recognize the distinction at all. There is no necessity, however, in our system, for the lawyer to have both qualifications, although, in fact, all but a very few are both Barrister and Solicitor.

Practically all of the practising lawyers in the Province met at Wilson's Hotel, Newark, July 17, 1797, to organize the Law Society. No uncomplimentary inference is to be drawn from the place of meeting: Wilson's Tavern or Hotel was the usual place for meetings of all kinds at Niagara, Freemasons as well as others: the Tavern was at the south-east corner of Queen and Gate Streets. There were present John White (the Attorney-General), Robert Isaac Dey Gray (the Solicitor-General), Angus Macdonell, James Clark, Allan McLean, William Dummer Powell, Alexander Stewart, Nicholas Hagerman and Bartholomew Crannell Beardley—with all of whom except the last we have already met—and also Christopher Robinson.

Christopher Robinson was of the Virginian family of that name; he was the only son of his family to remain loyal: he, an ardent Loyalist, joined the British Army, and in 1781 received a commission in Colonel Sinclair's Regiment. the Queen's Rangers. After the peace, in 1784, he came to New Brunswick: in 1788, he removed to what became a few years later Lower Canada, and in 1792 to Upper Canada, where his old Colonel, John Graves Simcoe, was Lieutenant-Governor. When he received a licence to practise, as he must have done. does not appear; but it was before May 1, 1795, as on that day he appeared as Counsel in the Court of King's Bench at Newark. He practised in Kingston until his removal to York in 1798; he died three weeks after his removal at the early age of 35. He was a Member of the House of Assembly in the Second Parliament for Addington and Ontario (Ontario was then the St. Lawrence Islands) and tried-and almost succeeded in the attempt-to have immigrants permitted to bring their negro slaves into the Province with them. The Bill passed the Assembly, 1798; but received the three months' hoist in the Legislative Council; and the attempt was never renewed.

He was the father of Sir John Beverley Robinson, Bart., Chief Justice of Upper Canada and the grandfather of the much-loved and much-admired Christopher Robinson, Q. C. As showing the primitive ways of the time, it may be mentioned that Robinson when about to come to York, arranged for a log house to be built for him a little east of where the River Don flows into Lake Ontario—he was buried in the Garrison burial ground.

All those who were present at the first meeting of the Law Society were formally called to the Bar, as were also Walter Roe, Timothy Thompson, Jacob Farrand, Samuel Sherwood and John McKay.

Who John McKay was and what were his qualifications for call cannot now be said with any certainty—possibly he had received a licence to practise although his name does not appear on the Roll of the Court of King's Bench; nothing seems to be known of his career.

David William Smith, Richard Barnes Tickell, Davenport Phelps and Charles J. Peters, although qualified, were not practising; and consequently did not join the Society or become Called to the Bar.

The first student admitted was the extraordinary character, William Weekes. Weekes was an Irishman, more than suspected of treason, who emigrated to New York where he became the student of the well known Aaron Burr; he at length came to Upper Canada and became a student of law at York. He was admitted as Attorney in 1798 and received his call as Barrister in 1799; he soon acquired a very large practice and became a Member of the House of Assembly in 1805. He joined Mr. Justice Thorpe's factious opposition to the Government—an opposition which is almost inexplicable in many particulars—and he and Thorpe were close personal friends. Largely at Thorpe's instance, he challenged William Dickson, another Barrister, to a duel at Niagara, probably expecting Dickson, a Scotsman with a wife and a large family, to decline. But the challenge was accepted, the parties crossed over the River, and in the morning of October 10, 1806, near the old Fort, shots were exchanged, Weekes was mortally wounded and died the same evening.

CHAPTER IV.

The Courts

The Law Society being now fairly started on its long and honourable career, it is time to take a glance at the Courts.

The Judicature Act of 1784, when creating a Court of King's Bench, did not introduce the practice in England in its entirety. No reader of popular literature can be ignorant that, in England, the first step in an action of debt and the like was often the arrest of the unhappy debtor. This was the Common Law, i.e., the hereditary way—absurd enough in our modern conception as it is to put a debtor in prison and thereby deprive him of every opportunity of paying the debt, it recommended itself to the judgment of the Englishman.

The Upper Canada Act was drawn by Chief Justice Osgoode at the request of Lieutenant Governor Simcoe: Osgoode was an English lawyer, and as might be expected he was prejudiced in favour of the English system. The Bill was promoted in the Lower House by the Attorney-General, John White, another English lawyer—but it contained a radical variance from the traditional English practice. Instead of every debtor being arrested and held until he could furnish bail to answer the claim, it was only when the plaintiff swore to a debt certain and also swore to his belief that the debtor was about to leave the Province with intent to defraud his creditors, that the debtor could be arrested and "held to special bail," as the technical expression was-this is still our In all other cases, the form was followed of "putting in common bail" a mere form in which the defendant took no part. The late Goldwin Smith used to say-and we hear the saying gleefully repeated by those who should know better, especially members of other professions—"As well expect the tiger to abolish the jungle, as the lawyer to better the law." This is as foolish a statement as even Goldwin Smith ever made-and with all respect for his great learning, splendid literary ability and genuine desire to do good to his fellow man, he seemed fated to go wrong on almost every Canadian subject-in our legal history, all the betterment of the practice of the law has been the work of the lawyer from Osgoode to Mowat, not to speak of the living.

It should be a matter of gratification that the very first order made by Mr. Justice Powell, presiding at the first sittings of the Court of King's Bench, was to prevent a slip in practice from being fatal to the party making it. Powell, also, during the time he was the Senior Puisné and before the arrival of Chief Justice Elmsley, made a number of Rules to overcome technicalities and enable business to be done. Elmsley came from England, where the practice was more rigid—the profession was more highly educated from a technical point of view certainly, and probably in general education as well: he at first repealed the Rules made by Powell; but, when the hardship became apparent, Elmsley himself had the Legislature act in the matter.

For a time, too, there was considerable hardship in the fact that the Courts of Common Pleas, which had their offices in the Districts, were abolished, and the new Court of King's Bench had its office only at the Capital—consequently every plaintiff must needs send to Niagara for his writ before he could sue. This hardship, and it was a real hardship, was removed and the old facilities were restored in 1797 by an Act of the Legislature requiring the Clerk of the Crown and Pleas to have an office in every District and also in Newark (the

Court came to York in 1797) for the issue of writs and the filing of pleas. This is still our practice; each County Town, corresponding to the old District Town, has its Local Registrar for the issue of writs and filing of pleadings.

Even before the Judicature Act of 1794, it had been recognized that the Courts of Common Pleas would soon come to an end; and Courts of Requests were in 1792 established for the recovery of small debts. These are our present Division Courts; they have now much increased jurisdiction and are a most important part of our court system.

When the Judicature Act was passed in 1794, it was considered that there would be claims larger than could be disposed of by the Courts of Requests, but too small to be economically dealt with in the Court of King's Bench, which, like all Superior Courts, must necessarily be somewhat cumbrous in its operation. A new kind of Court was erected for such claims—the District Court, now the County Court.

These two kinds of Inferior Courts were presided over by laymen for a time—but, in 1841, the District Court Judge was directed to preside in the former Courts, and before this time, it had become the practice to appoint lawyers to the District Court. With the exception of Peter Russell, who sat pro tempore, the Judges of the Court of King's Bench and all other Superior Courts since 1794 have been Members of the Bar, either of England or of Upper Canada; and, since John Beverley Robinson's time, (1829), all of the Bar of Upper Canada. Now they must be of ten years' standing at our Bar. As the Superior Courts were presided over by trained lawyers, it took the Province some time to recognize the fact, which the people of Detroit understood as early as 1788, that those who were trained in the law were better adapted for the exercise of the function of judges than doctors, merchants or parsons, however intelligent and well meaning; and there is no fear of any reversion to the old system.

Appointments to the Bench were long made by the Home Administration. This should not be considered strange, because the Judges, at that time, were paid by the British Treasury. In many, but by no means in all, cases the appointments had first been recommended by the Lieutenant-Governor, who had a real and a serious responsibility. The practice followed was for the Home Government to have a Royal mandamus or warrant issued to the appointee, who would present it to the Lieutenant-Governor and the Lieutenant-Governor would then issue a Commission under the Great Seal of the Province. The interference of the Home Administration came to an end in the process of granting Responsible Government generally to the Province: of course, now the Administration at Ottawa is responsible for all judicial appointments (except Police Magistrates, Justices of the Peace and Surrogate Judges).

The first Canadian-born Chief Justice of Upper Canada was Sir John Beverley Robinson who was appointed Chief Justice of the Province in 1829—of the previous Chief Justices, William Osgoode (1792-1794), John Elmsley (1796-1802) and Henry Allcock (1802-1806), were Englishmen; Thomas Scott (1806-1816) and William Campbell (1825-1829), were Scotsmen, while William Dummer Powell was born at Boston, Massachusetts, before the Revolution. Of the Puisné Justices, Henry Allcock (1798-1802), D'Arcy Boulton (1818-1827), and John Walpole Willis (1827-1828) were Englishmen. Robert Thorpe (1805-1807) was an Irishman; William Campbell (1811-1825) a Scotsman; and William Dummer Powell (1785-1816) as we have seen was American.

Legal Fictions

Not only by education and an affection for familiar law, but also by the circumstance that an appeal lay in many instances to the King-in-Council, i.e., the Judicial Committee of the Privy Council, the decisions and course of the

Courts in the Province closely followed these of the Courts in England, keeping pace, pari passu, with the advance of the English Courts. The same expedients were adopted for doing substantial justice at the expense of technicality—one of these was legal fiction. A legal fiction is not a lie any more than a parable or a novel, "a work of fiction," is a lie. A lie is an untruth intended to be believed; a legal fiction everyone knew to be a misstatement, and no one was expected to believe it. A lie generally is intended to defraud or do someone some harm: a legal fiction is always intended to do justice and can harm no one.

When a rule of procedure or the like was found to work an injustice and Parliament did not act, the Courts and lawyers would sometimes invent a legal fiction to get over the difficulty. The best known legal fiction will furnish a good illustration.

A Legal Fiction

"At the Common Law," i.e., by the traditional law for which previous generations were responsible, for a person to obtain his land of which another had taken possession, a tedious and intricate "Real Action," full of traps and pitfalls, was necessary. In the time of the Commonwealth, a very eminent English lawyer invented a method of getting rid of the "Real Action," and trying the matter like any ordinary case of trespass, which had a simple procedure where he who ran might read. On the restoration of the Stewart Kings, while some of the valuable measures of Cromwell's time were done away with, the action of "Ejectment" was left undisturbed: it continued in England, and was brought into Upper Canada with the English Law and the Court of King's Bench on the English Model.

Simple as it is and easily understood, let it serve as a sample of the much vilified legal fiction.

John Smith claims that he owns certain land, of which James Brown is in possession; a pretence is made that John Smith has made a lease of the land to some person (non-existent) called John Doe (or John Goodtitle or Timothy Goodright, etc.—any name will do, for it is vox et preterea nihil): that John Doe went on the land and that another imaginary person (who received the title "Casual Ejector") Richard Roe (any name will do) assaulted him and put him off "by force and arms." It is obvious that, if John Smith actually owned the land (the pretences being considered true), John Doe would have an action for assault (trespass) against Richard Roe. A writ was issued in the name of John Doe "on the demise of John Smith," (i.e., under lease from John Smith) against Richard Roe, but, there being no such person, notice was given to James Brown, who was in possession of the land. Brown might say: "This is no concern of mine, I am not sued"; but, if he did, judgment would go by default against Richard Roe with awkward consequences to Brown. Consequently, Brown, consulting a lawyer, would make an application to the Court. taking Richard Roe's trespasses upon himself, and asking to be allowed to defend instead of Richard Roe. The Court would permit this, but on condition that Brown admitted the lease from Smith to John Doe, John Doe's entry on the land and Richard Roe's assault and ejection of John Doe-"Lease, Entry and Ouster" as the technical phrase ran. Accordingly, all that had to be tried was John Smith's ownership of the land. All this looks clumsy, and it is clumsy as compared with our modern practice; but it is simplicity itself compared with the old "Real Actions." It became a mere matter of routine, familiar to every lawyer, and caused no difficulty. Simple as it was, the lawyers got tired of it, and, in 1885, the Baldwin-Lafontaine Ministry, headed by lawyers, had an Act passed which directed a simpler form of practice—as it was "expedient to abolish all f'ctions of law in action of ejectment"-a writ claiming the land and served on the real defendant.

Legal fictions were all very well where there were mere matters of procedure and the like concerned—these were in the discretion and power of the Courts. But neither the Courts nor the lawyers could change the law: and the law, however sensible and just when first formed often became absurd and unjust by change of circumstances: and it must be said that, in some instances, it is hard, if not impossible, to discover the justice of certain of the rules at any stage.

Court of Chancery

To "mitigate the rigour of the Common Law"—that is the conventional and time-honoured phrase—a Court of Chancery was established in England. The old "Government of Quebec," until 1774, had a Court of Chancery under British rule; but, when the Common Law of England was abrogated in that Province by the Quebec Act, there was no longer need of it. The Province of Upper Canada had no Court of Chancery for many years: it was, indeed, considered that the Lieutenant-Governor, as custodian of the Great Seal of the Province, was, ipso facto, Chancellor and might hold a Court of Chancery or erect one: there were many suggestions as to such a Court, but none was formed until 1837—it was modified and enlarged in 1849, and continued to exist as a separate Court until 1881, when it was merged with the Superior Courts of Common Law by Sir Oliver Mowat's Judicature Act of that year.

Even the Court of Chancery could not change the rules of the Common Law: the most it could do was to prevent their application in many cases.

Accordingly, when a change was called for in the rules of law, the Legislature had to be called upon to interfere and keep the law abreast of the times: and, in every case, the change was brought about by lawyers on or off the Bench.

Judges as Executive and Legislative Councillors

For several decades, not only were the Chief Justices not above politics: it was their duty to sit in the Legislative Council and to preside in that Chamber as Speaker. They were even called upon to take some responsibility in the administration of the Province; for all, until after the Union of 1840, were Members of the Executive Council.

Osgoode and Elmsley concerned themselves chiefly with legislation (Elmsley, indeed, did his best to prevent the Court coming to York, Toronto, from Newark, Niagara-on-the-Lake, in 1797). Allcock was a great favorite of Lieutenant-Governor Peter Hunter, and was very influential in his Administration; indeed it is suggested in somewhat plain terms, that he was Hunter's ame damnée—he certainly helped the Governor to much money by legal, if questionable, means—"honest graft" it may be called. Scott, who was an amiable mediocrity, detested responsibility and cared little for administration, but Powell was the master of the Administration during most of his Chief Justiceship. Robinson was President of the Executive Council until 1832, and a power on the Board: in 1832, the Government in England suggested his resignation, and he at once resigned.

In the Legislative Council it is known that Osgoode was very active; even more responsibility was cast on Elmsley and his successors, they had the duty of justifying to the Home Authorities the Bills which were assented to, fully explaining those which were reserved and making representations concerning the advisability of allowing them.

All the Chief Justices in turn were Members and Speakers of the Legislative Council until 1838; when Robinson went to England, his place was taken for a time by Mr. Justice Jonas Jones, who was the only Judge never a Chief Justice who sat in old Upper Canada Legislative Council.

The Union of the Canadas put an end to the system. When the Union Parliament met in 1841, Robert Sympson Jameson, Vice-Chancellor of Upper Canada, became Speaker in the Legislative Council, resigning that position in 1843, but continuing a Member until his death in 1854. Since that time no Judge has been a Member of Parliament—and, indeed, Jameson ceased to be Vice-Chancellor in 1850, shortly after the reorganization of the Court of Chancery by the Act of 1849.

Judges in House of Assembly

While in Lower Canada, from the very beginning, Judges took an active part in politics and were elected to the House of Assembly, in Upper Canada only two Judges of the King's Bench made the experiment. Henry Allcock, when still a Puisné Justice, was elected Member of the Legislative Assembly for Durham and Simcoe and the East Riding of York in 1800 for the Third Parliament. He was defeated for the Speakership by Mr. (afterwards Sir) David William Smith, and enjoyed his honours for only about a fortnight; on a petition against his return he was unseated and did not again offer himself as a candidate.

Robert Thorpe, the stormy petrel of our Bench, had a more exciting and lengthened parliamentary career. An Irishman, a friend, supporter and protégé of Castlereagh, he had rendered his patron some service of a character not disclosed, but, as it was about the time of the Union of Great Britain and Ireland, it can be guessed: he was rewarded by being appointed Chief Justice of the Supreme Court of Prince Edward Island. There, he fell out with the Governor and was removed to Upper Canada. It was not long before he became a violent opponent of the Government. He associated himself with Willcocks, who had been one of the United Irishmen, Weekes, who was certainly disloyal, and others of the same kind. At length his conduct in and out of the House-he was elected for Durham and Simcoe and the East Riding of York, in 1806, in succession to his friend William Weekes, who had been killed by Dickson at Niagara in a duel-became unbearable and he was (1807) suspended by Lieutenant-Governor Gore, on the direction of Castlereagh. He went to England, confident of reinstatement, but was disappointed. Castlereagh was not unmindful of him, and he received the appointment of Chief Justice of Sierra Leone, which position he held for only two years, being relieved of it in disgrace, and passed the remainder of his life in obscurity, neglect and poverty. It did not pay to be always "agin' the Gover'ment."

No other Judge of this Province has entered or tried to enter the Legislature while a Judge: most of the Judges, before being called to the Bench, have taken some part in politics, some of them a very active part, indeed.

CHAPTER V.

The Law Society of Upper Canada after the admission of William Weekes in 1799 had to wait nearly two years for students to be admitted, but thereafter there was no dearth of them—and at the present time the number is rather increasing than diminishing.

The lists of the Society were slightly but very slightly increased by the admission as Barristers of the Attorney-Generals sent out from England, Thomas Scott (afterwards Chief Justice) 1801, and William Firth (who got into trouble with Lieutenant Governor Gore and was dismissed—he afterwards became a Serjeant in England, 1807).

Heaven-born Lawyers of 1803

In 1803, the Province again felt great inconvenience from the want of a sufficient number of persons duly authorized to practise the profession of the law—at least the Legislature said so—and an Act was passed similar in most respects to that of 1794: this authorized the Lieutenant-Governor to grant a licence to a number not exceeding six of such persons "as he from their probity, education and condition in life" should consider proper—and the licence was to assure their being admitted members of the Law Society and Attorneys of the Court of King's Bench.

At that time there could not have been more than about ten practitioners in the Province—John White was dead, killed in a duel in 1800, Walter Roe was Register of his District and confined his practice to the West, James Clark had got into trouble with his clients, Christopher Robinson was dead, William Dummer Powell, Jr., had fallen on evil days and was already marked for death, Bartholomew Crannell Beardsley seems never to have had much practice and by this time, was practically if not wholly out of it, Timothy Thompson was in local politics and an active Magistrate, Jacob Farrand though still nominally in practice, had several local offices and was near the end of his life, John McKay seems never to have practised and Thomas Scott was Attorney-General.

A new batch of "heaven born lawyers" appeared, but the Lieutenant-Governor, Peter Hunter, did not exhaust the arrows in his quiver, for he appointed only five. They were all men of some ability and prominence.

The first was D'Arcy Boulton of a well known and widely spread Lincolnshire family—I have met members of a Venezuela Branch in Caraccas—the son of an English Barrister, he was himself entered of the Middle Temple but was not called to the English Bar. He came to this Continent in 1797 and settled in the Township of Augusta, Upper Canada, where he was living when he received his licence; then left it at once for York. In 1805, he was made Solicitor General on the death of Grey. He had the same year published in London a valuable sketch of Upper Canada now very rare—it contains a curious mistake due to misreading a map—"the rear of (the township of) Hamilton is Aives," there is not and never was any such place or name as "Aives"—"Rice Lake" is meant. The map prefixed shows no town between Hamilton (now Cobourg) and York (Toronto), and none between York and Niagara except Flamboro, while all the counties west of York were Lincoln, Suffolk, Norfolk, Essex and Kent.

Boulton was wounded and taken prisoner by a French Privateer in 1810 when on his way to England and was a prisoner in France when the War of 1812 broke out: when John Macdonell, the young Attorney-General, was killed at Queenston in that war, his claims to the succession were considered good and

John Beverley Robinson was appointed only Acting Attorney-General. When Boulton was released, 1814, Robinson made way for him and himself became Solicitor-General. In 1818, Gore was anxious for Robinson to become Attorney-General and offered Boulton a seat in the Bench. The subsequent transactions are amusing as a sample of how things were done in those days: Boulton agreed to go upon the Bench if his son, Henry John Boulton, then a very promising young lawyer, called in 1816, received the Solicitor-Generalship in succession to Robinson. This was too glaring a deal for Gore to venture to recommend to the Home Government, and he refused to accept the offer on these terms: however, a little camouflage was indulged in, Boulton withdrew his condition and offered to accept the Judgeship simpliciter: Gore wrote the Minister that Boulton would accept but ne made it plain that it was in the hope and expectation that his son would be appointed Solicitor-General—he was. Mr. Justice Boulton occupied a seat in the Bench until 1827, when he retired: he has many descendants in Canada who are proud of their progenitor and who are worthy of him.

The well known William Warren Baldwin also received a licence. Born in the South of Ireland near Cork, educated in Medicine in the Edinburgh University, he practised medicine for a time in his native country. Toward the end of the 18th Century he came with his father, Robert Baldwin, and family to Upper Canada, settling in Durham County on Baldwin's Creek, now Wilmot's Creek The doctor found little to do in that wild and unsettled region and came to York to open a school; he received a licence to practise law in 1803 and at once had a good practice. He became a Bencher in 1807, Treasurer in 1811: he was Treasurer for many years, sometimes giving way to D'Arcy Boulton, Henry John Boulton, John Beverley Robinson or George Ridout. He did much for the education of students-at-law during his terms of office. One of the interesting facts of his life is little known-young John Macdonell, the Attorney-General, used insolent language to him in Court on more than one occasion; in 1812, Baldwin challenged him and they fought a duel on the York Peninsula, now our Toronto Island-Macdonell firing in the air and Baldwin doing no damage by his fire. Baldwin was rather more radical than his better known son, Robert Baldwin.

William Dickson of Niagara, a Scotsman, born in Dumfries, 1769, came to Niagara in 1792. He did not engage very actively in the practice of law after he received his licence, but he occasionally appeared in Court: it was owing to a rebuke wholly justified, which he administered in Court to his colleague, William Weekes, that the duel took place in 1806 in which he killed Weekes. He bought large quantities of wild land, e.g., the Township of Dumfries, in 1816 for £24,000, about \$1.00 an acre—and speculating in it, he got into trouble with the Lieutenant Governor, who was anxious that no aliens should be settled in the Province. He first encouraged the well known Robert Fleming Gourlay and then took a leading part in the proceedings which led to his banishment in 1819. Before this, he had become, 1815, a member of the Legislative Council: he was more of a speculator and money maker than lawyer. During the war of 1812, he was taken prisoner and sent to Greenbush, N. Y.: when subsequently he was paroled, an effort was made to detain him for murder in his duel some years before; the Judge, however, ordered his discharge as he should not be detained, being a military prisoner.

John Powell of York was the eldest son of William Dummer Powell and was born in 1776: he was more of an office holder than practitioner and does not appear in the Reports. His son, John, was Alderman John Powell, the "Savior of Toronto," in 1837. William Elliott of Sandwich was the fifth of this group; he never was an active practitioner.

The result of this legislation, then, was to add two able and active barristers to the profession and little more—thereafter the regular course served to

furnish a sufficient number of lawyers and the country was satisfied. During the War of 1812, indeed, some students were unable to have their entry and articles entered at the proper time, while some could not serve their full time, being engaged in active service, etc.: the Legislature relieved such persons in view of their services to the country.

Attorneys-at-Law

In 1822, the Law Society was relieved of all supervision over Attorneys—up to this time the members of the profession were generally both Barristers and Attorneys, though there were a few exceptions. After 1822, however, the profession of Attorney deteriorated, as nothing was required of an Attorney but his service under articles for five years, and a certificate of his master, while the education of the Barrister became more and more extended as time went on. A matriculation examination had been prescribed in Latin and English in 1820: in 1828 and 1831 the students-at-law were required to attend the Court in Term for four Terms, and in the latter year an Examination was required for Call. These examinations were made more and more difficult; but the Attorney escaped them altogether. More and more the practice grew of persons becoming Attorneys only: this the Legislature at length took notice of, and in 1859 placed the Attorney under the charge of the Law Society for a curriculum and examination. The Law Society was to certify to the fitness of the applicant to be admitted by the Courts, and the Courts were to act on the certificate—this is the present system. No court can hear a Barrister not called by the Law Society, or admit a Solicitor without its certificate: the Law Society is the sole judge of the fitness and capacity of either-and the legal profession is master in its own house. The result is that while before the Act of 1859 nearly 30% of the practising lawyers had not been called to the Bar, now there are less than 4%: while the standard of education has been very greatly raised.

King's Counsel

Bearing in mind the importance attached to the silk gown at the present time and the number of lawyers who have the title K. C., it may seem strange that there were no K. C.'s in Upper Canada.

In 1815, the Acting Lieutenant-Governor, Sir Frederick Phipse Robinson, appointed a young soldier-lawyer, Christopher Alexander Hagerman, King's Counsel for the Province, and the appointment was duly gazetted: but Gore came back to his Lieutenant-Governorship and did not cause a patent to issue; on the contrary he submitted the question of the propriety of such an appointment to the Judges of the Court of King's Bench, and they advised against it.

There were no King's Counsel in the Province at all—the first appointment of the kind was in January, 1838, after the Accession of Queen Victoria when Allan Napier MacNab, John Solomon Cartwright and Henry Sherwood were appointed Q. C.—the only Q. C.'s ever appointed in the old Province of Upper Canada—after the Union there were many appointed for that part of the United Canada, "known as Canada West or Upper Canada," George Morss Boswell (afterwards Judge Boswell of Cobourg) being the first.

Allan Napier MacNab was well deserving of any honour his Province could give him, for his services during the Rebellion. As a boy of fourteen he had fought in the War of 1812: called to the Bar in 1826, he had a good practice in Hamilton: he became a Member of the House of Assembly for Wentworth in 1831 and was Speaker when the Mackenzie Rebellion broke out. For his services, he was knighted: he became Premier of United Canada, and on his retirement from the position in 1856 he was made a Baronet. He went to England,

and failing in his attempt to enter the House of Commons there, he returned to Canada and became a Member of the Legislative Council: he died 1862, and his Baronetage is extinct.

John Solomon Cartwright was the son of the Honourable Richard Cartwright, who was a Member of the first Legislative Council of the Province and took so prominent and so creditable a part in its early life, business and legislation. The son was called in 1825 and had a good practice in the eastern part of the Province—his sons, James S. and John R., the former Master in Chambers and Deputy Attorney-General, were well known in Toronto and to the profession generally.

Henry Sherwood was the third to receive a patent as Q. C. He was the eldest son of Mr. Justice Levius Peters Sherwood of the Court of King's Bench: called in 1828, he became, 1836, Member of the House of Assembly for Brockville. After the Union, he became, 1842, Solicitor-General for Canada West and in 1847, Attorney-General.

Henry Sherwood had later on to fight for his precedence: Henry John Boulton was appointed a Queen's Counsel for Upper Canada, September 15, 1842, by a patent which directed him to take precedence immediately after the Honourable William Draper, who was appointed a Q. C. on the same day. Draper was at that time "Attorney-General West" and Sherwood "Solicitor-General West;" and Boulton claimed precedence over Sherwood, claiming that Draper was the Head of the Bar and that he came next under his patent. In January, 1844, he moved the Court of King's Bench for what he conceived to be his right; but the Court held that the Patent gave him precedence next after Draper as Q. C. and not as Attorney-General: and he was consequently postponed to all the Q. C.'s appointed before him.

CHAPTER VI.

Lawyers in Public Life

The legal profession from the beginning took its share of the public life of the Province both in and out of Parliament. William Weekes has already been spoken of; so have Isaac Dey Gray, Angus Macdonell, Timothy Thompson, Samuel Sherwood, Christopher Robinson, David William Smith (if it be proper to call him a lawyer), D'Arcy Boulton, Allan McLean and some others.

Levius Peters Sherwood, called in 1803, became a Member of the House of Assembly for Leeds in 1812 and again in 1820, when he became Speaker, 1821: he became a Judge of the Court of King's Bench, 1825, a Bencher, 1820, was elected a Member of the House of Assembly for Grenville, 1816, 1820 and 1824; a bitter and uncompromising Tory, the part he took in the prosecution of Gourlay is well known. In 1836 he was again returned to the House, this time for Leeds: and he took a very active part against the proposal to unite the two Canadas: he reached the Bench in 1837 and had a creditable career as Judge until his death in 1848.

To write the story of John Beverley Robinson, called 1815, would be to write the story of the Province during his time—soldier, lawyer, statesman, judge, he was in all of the first rank—and a gallant, handsome, charming personality.

George Ridout, called in 1815, became a Bencher and Treasurer: of sound Tory stock, he could not go the lengths of Francis Bond Head, and fell under the displeasure of the great man. Good patriot as he was, he was deprived of his offices because he saw some merit in the claims of the Radicals. James Edward Small, called 1821, had the same fate; and no one but Head ever accused a Small of being a traitor.

Christopher Alexander Hagerman, who did not get his patent of K. C. in 1815, was called in that year: he practised in Kingston for a time and afterwards in York. He took a leading part in the times of Mackenzie and proved himself as great a master of invective as Mackenzie himself. He became Solicitor-General in 1829, after being removed from the Bench to which he had been appointed pro tempore, upon the amoval of Mr. Justice Willis in 1828: Attorney-General in 1837, he reached the Bench in 1840.

In the same year with Hagerman was called Archibald McLean. He was the son of a gallant Scottish officer who had been in the Royal Highland or 84th Regiment. Archibald was born in the County of Stormont in 1791; he was educated in the famous school at Cornwall, of the Reverend John Strachan, afterwards the first Anglican Bishop of Toronto; and at the age of 17, he was articled to the Attorney-General, William Firth, an English Barrister, who shortly afterwards got into trouble with Lieutenant-Governor Francis Gore, and, as we have seen, had to give up his office and return to England, where he became a Serjeant-at-law and practised in Norwich.

When Firth went to England in 1811, the young John Macdonell who had been called only three years before, was appointed to the office of Attorney-General, and McLean transferred his service to him. But the War of 1812 came on, the Province was invaded and McLean took up arms in her defence. At the Battle of Queenston Heights in October, 1812, he fought as Lieutenant in the 3rd York Militia; and when Macdonell received his death wound, he hastened to his side to answer to the cry, "Archie, help me." McLean himself received a bullet wound so severe that for a time his life was despaired of, but after a few months he re-

turned to duty. He took part in the defence of York in 1813, and later fought at Lundy's Lane, where he was made prisoner, receiving his freedom only at the end Refusing a commission in the regular Army he entered the law office of William Warren Baldwin and received his Call in 1815. Cornwall, was elected in 1820 for Stormont to the House of Assembly in the Eighth Parliament, entering the House with his life-long friend John Beverley Robinson, with whom he generally agreed on public matters. Re-elected in 1824 for the Ninth, in 1828 for the Tenth, and in 1830 for the Eleventh Parliament, he became Speaker of the House in the last named. In the Twelfth Parliament he was a member, but it was a Radical Parliament and Marshall Spring Bidwell became Speaker: Francis Bond Head was triumphant—a Pyrrhic victory—in 1836, and McLean was elected Speaker. He removed to Toronto when he was appointed to the Bench and had been there a short time when Mackenzie's Rebellion broke out and he took part, as Colonel, in suppressing it. He also went to Washington with despatches for the British Minister and escaped capture by the Sympathizers through the efforts of his political opponent, but personal friend, Marshall Spring Bidwell. McLean, in 1850, went from the King's Bench to the Common Pleas, but returned in 1856 to the King's Bench; he became Chief Justice in 1862 and next year President of the Court of Error and Appeal-he died the same year after having held the office only a few months, "a brave soldier, an upright Judge, a Christian gentleman."

In 1816, Henry John Boulton was called to the Bar: the son of D'Arcy Boulton, he was articled in 1818 to his father, along with John Beverley Robinson and George Ridout—shortly after he was called he acted as second for Jarvis in the duel in which the unfortunate lad, John Ridout, was killed not far from the northwest corner of Yonge and College Streets. Jarvis was placed on trial for murder and Boulton and James E. Small who had been Ridout's seconds were indicted as accessories: Jarvis was acquitted, and of course the seconds were released.

Boulton went to England to study law and fit himself for the highest positions; while there, the "deal" went through whereby his father became Judge, John Beverley Robinson became Attorney-General and he succeeded Robinson as Solicitor-General (1818), at first only as Acting Solicitor-General, but in 1820 his appointment became permanent. From that time on, he was an active figure in politics on the Tory or Government side: he did not enter the House until 1830, when he was elected to represent the Town of Niagara in the Eleventh Parliament: he had in the previous year succeeded Robinson as Attorney-General when Robinson became Chief Justice of the Province. He and Mackenzie crossed swords more than once, and the determination of the question of their relative success depended upon the politics of the observer. While Hagerman was content to call Mackenzie a spaniel dog, Boulton descended the scale of animate nature and called him a reptile; but Mackenzie was rather an adept at that style of political warfare, and it would not be unfair to adopt the contemporary whist player's verdict that "honours were easy." Mackenzie's repeated expulsion from the House did not meet the approval of the Home Government: both Attorney-General Boulton and Solicitor-General Hagerman returned spirited answers-in those Colonial days considered impudent answers—to the enquiry of the Home Authorities, and they were both cashiered.

Boulton went to England and explained his conduct; but as Robert Sympson Jameson had been appointed Attorney-General, he could not be reinstated. He was, however, consoled with the appointment of Chief Justice of Newfoundland: there he had a semi-religious controversy and resigned the office, returning to Canada in 1838. He became a Member of Parliament but he had lost much of his former high Tory doctrine and all of his acerbity. He supported the principle of Responsible Government, but it cannot be said that he was ever cordially welcomed by those who had made it their political creed.

In the year 1816, there were admitted as students-at-law upon the same day two young men who were destined to become bitter political antagonists, both of great ability but of different dispositions—Allan Napier MacNab and Marshall Spring Bidwell. Bidwell received his Call in due course in 1821 while MacNab waited until five years later.

Marshall Spring Bidwell was American born, the son of Barnabas Bidwell, who had held high office in Massachussets, but who left that State under a cloud, and in 1810 came to Canada. The father was a man of great ability—he is usually credited with the authorship of the most valuable part of Gourlay's Statistical Account of Upper Canada: he taught school and finally became managing clerk to an Attorney, Daniel Washburn of Kingston. Some years later, in 1827, after Washburn had fled to the United States and been disbarred for misconduct. Barnabas was charged with practising in his name as an Attorney and narrowly escaped fine and imprisonment. When Marshall Spring Bidwell was admitted as a student, he was articled to Daniel Washburn, then in good standing, and he pursued his studies with avidity, most of his education having been received from his accomplished father. He was called in 1821, his preceptor, Washburn, having already been complained of but not yet disbarred. In the latter part of the year Daniel Hagerman, who represented the constituency of Lennox and Addington in the House, died and Barnabas Bidwell was nominated by the Radicals to oppose John Church, the Government candidate. There was a bitter political fight, and the young barrister took his full share of the battle for his father's election. Government candidate was defeated and the elder Bidwell took his seat—but he was petitioned against and unseated—beyond any question properly unseated, although there has been much said against the proceedings. To prevent his reelection, which was considered inevitable, what was in substance an "exclusion bill" was passed: the father thus being ineligible, the son was nominated by his party. But the Returning Officer rejected all votes tendered for Bidwell on the ground that he was not a British subject. The election was protested, and Bidwell appeared as Counsel for the petitioner: on the division of 22 to 10 (Dr. Baldwin voted with the minority), the House decided that nothwithstanding the alien birth of Bidwell, he was qualified to be a Member of the House. A new election resulted in the return of George Ham, Bidwell's antagonist: this in its turn was set aside for irregularities, 1823: but at the General Election of 1824, Bidwell was returned (the facts of these elections and protests are generally misstated). He took a leading part in the political struggles of the times: was reelected for the Tenth Parliament in 1828 and became Speaker. He was again elected in 1830 but his party had lost control of the House and he did not become Speaker, that honour going to Archibald McLean, his personal friend. But he had his revenge at the General Election of 1834 when he was elected and then became Speaker. He was not in the Thirteenth Parliament, 1836-1841, but his influence in the party was little, if any, diminished. His part (if any), in the more radical schemes of Mackenzie is not perhaps wholly clear; in 1837 he abandoned Upper Canada for New York where he lived in honour and prosperity for the remainder of his life, refusing to consider a proposition that he should return and occupy a seat on the Bench of the Province.

In the same year as Bidwell, but two Terms later, the Law Socety called to the Bar a more extraordinary man still. John Rolph was an Englishman by birth who came in early life to Upper Canada. During the War of 1812, he was on active service, and was for a time a prisoner of war. Acting as paymaster, a complaint was made that he had taken some of the public money for his own use: but an inquiry which he demanded, showed that on the contrary he had expended more than he had received. After the War he returned for a time to England where he was called to the Bar of the Inner Temple and also became a Member of the College of Surgeons. Returning to Canada, he settled in the Lon-

don District; and practising both law and medicine, he soon became well known. He took the Liberal or Radical side in the politics of the time, and was in 1824 returned Member of the House of Assembly for Middlesex in the Ninth Parliament, thus entering the House with Marshall Spring Bidwell. He soon was in the forefront of Reform and was an able debater; the part taken by him in the Mackenzie Rebellion is still disputed. At all events, he left the country for a time; returning, he was again prominent in public life. He founded the Rolph School of Medicine, which became the Medical Faculty of Victoria University: it was said of him that he could lecture with credit on any subject in the curriculum. He threw off his gown with other barristers, the Baldwins, father and son, and Simon Washburn, when Mr. Justice Sherwood insisted on holding Term and hearing Full Court motions without the presence of the Chief Justice and against the opinion and protest of Mr. Justice Willis, 1828. The Baldwins and Washburn returned to the Bar, but Rolph never practised law thereafter, confining his attention to medicine and politics. While there will naturally be a difference of opinion as to his politics, there can be none as to his very great ability. He was a member of the Tenth and Thirteenth Parliaments of Upper Canada, and was expelled from the latter as a Rebel, January, 1838.

Rolph's Call to the Bar by the Law Society in November, 1824, was a little different in its particulars from that of the Canadian-educated: he produced to the Court of King's Bench a certificate of his Call by the Inner Temple and they, under the authority of the Act of 1794, admitted him to practise (this power was taken away from the Court in 1824); then Rolph applied to be called by the Law Society and upon producing a certificate from the Clerk of the Crown of his being admitted by the Court of King's Bench, the Law Society called him.

His brother, George Rolph, sometimes, but erroneously, called an English Barrister, was called in the same year, 1821. He practised at Dundas; and it was the tarring-and-feathering of him that led to the action in which Mr. Justice Willis delivered the extraordinary and offensive judgment which had much to do with his amoval. He became Member for Halton, 1828, in the Tenth Parliament.

Robert Baldwin was the son of Dr. William Warren Baldwin and was born in Toronto in 1804 shortly after his father was made a lawyer by Act of Parliament and the grace of General Peter Hunter. At the age of 16 he entered his father's office and was admitted a student-at-law by the Law Society; after his call he practised with his father in Toronto; the firm had a large and lucrative practice, being engaged in most of the important litigation. With his father, Dr. Rolph and Simon Washburn, he threw off his gown in 1823 during the Willis episode; but he soon thought better of it and resumed his active practice in the Court. On the elevation to the Bench of John Beverley Robinson he was elected, 1829, Member in the Tenth Parliament for the Town of York—he had unsuccessfully contested the County of York at the General Election of 1828. Even before this time he had shown himself a strong advocate of Liberal principles—thereafter the story of his life may be considered that of Responsible Government. To him, also, is due much of the best part of our Municipal system. He took also a deep interest in education. He was calm and moderate in his views and language, and while deeply incensed at the activities of the Lieutenant-Governor, Francis Bond Head, he avoided the excesses of Mackenzie: he was wholly innocent of treason, even technically. He became Solicitor-General in 1840, Attorney-General West in 1842, and continued in public life until 1851: he survived until 1858. Robert Baldwin was the eponymous father of the "Baldwin Reformers."

Three years after Baldwin's Call, and in 1828, William Henry Draper became a Barrister. The son of a clergyman of the Church of England, he was born in London in 1801. He went away to sea when a lad, and settled in Canada in 1820; settling in Port Hope he became a teacher and finally entered the law office

of Thomas Ward, Port Hope: in 1823, Henry John Boulton, the Solicitor-General presented him to the Law Society as a student-at-law. He passed the trifling examination required to "satisfy the Society of his acquaintance with Latin and English Composition" (prescribed for the first time in 1820) and was admitted on the books of the Society. While still a student he was appointed Deputy Registrar of Northumberland: as such, he walked the seven miles between his home at Port Hope and the Registry Office at Cobourg, daily twice, going and returning, infandum dolorem, crede experto. After call, he joined Attorney-General Robinson's firm in Toronto, and soon entered public life. He was returned in the Tory and Government interest for Toronto at the General Election of 1836 for the Thirteenth Parliament, and became Solicitor-General the next year, Hagerman, the Solicitor-General, having succeeded to the Attorney-Generalship when Robert Sympson Jameson became Vice-Chancellor in our first Court of Chancery.

As Solicitor-General it fell to Draper's lot to prosecute many of those accused of high treason in the short-lived Rebellion: and he cannot be accused of lack of vigour in these prosecutions, unless those who were found not guilty do him injustice. When in 1840, Hagerman became a Justice of the Court of Queen's Bench, Draper succeeded him as Attorney-General. He continued Attorney-General for this part of Canada after the Union, until the Baldwin-Lafontaine Administration obtained power, 1843; and the next year he himself formed an Administration, being returned for London. He became a Justice of the Queen's Bench in 1847, Chief Justice of the Common Pleas in 1856, President of the Court of Error and Appeal in 1868, dying in 1877.

It is not deemed advisable to say anything of Barristers who have been prominent in public life only after the Union.

There were many others who took some part in the Parliaments and politics of the Old Province of Upper Canada; but the above named were the most prominent and influential. It can be confidently claimed that the Bar has not been wanting in a sense of duty to King and country.

CHAPTER VII.

History of the Courts

From the time of the establishment, in 1794, of the Court of King's Bench, there has been a continual process of improvement in the Rules of Practice, the changes being in most instances of too technical a character to be gone into here—they were, however, all in the direction of simplification and in almost all instances were of appreciable benefit to the litigant.

After 1794, the next crucial date in our legal history is 1837—in that year was established the first Court of Chancery. The Court of Chancery has been the object of much unfavourable comment and even objurgation. Dickens' account in "Bleak House" can never be forgotten. Some of the criticism was well deserved, for the Court became, in some instances, more technical and cumbrous than the Courts whose law it was intended to correct, while the delays were shameful. But imperfect as it was, it was better than no correcting Court at all: without the Court of Chancery the person borrowing money on a mortgage would lose his land at once if he did not pay every penny as soon as it was due—he who bought land could not get his deed even if he had paid for the land—there would be but little supervision over trustees, frauds would go unpunished, innocent mistakes go without remedy, and a myriad of things, in our complicated society, be hampered by old rules which were framed and were sufficient when transactions were few and simple.

After much discussion and delay in Upper Canada, a Court of Chancery was established in 1837, and from that time until the union of all the Courts in 1881, the Barristers of the Common Law Courts had the right to practise as Counsel in the Court of Chancery, and the Attorneys of the Common Law Courts to practise as Solicitors in the Court of Chancery. This Court of Chancery was reorganized in 1849 and a new Common Law Court was erected, called the Court of Common Pleas, having the same power and practice as the Court of King's Bench.

To illustrate the difference between a Common Law Court and the Court of Chancery the familiar example may serve—a person buys a farm, the vendor refuses to carry out his contract and to give a deed—the purchaser could not, in a Court of Common Law, compel him to give a deed, all he could get was damages: in a Court of Equity, i.e., a Court of Chancery, however, the vendor could be compelled to give a deed.

No one in those days had arrived at the simple solution of combining the Courts in one, so strong is the influence of the old ways. "Stare super vias antiquas."

The next epochal date is 1856, when the Common Law Procedure Act was passed: this got rid of a great deal of archaic and technical rubbish, it simplified the practice of the Common Law Court, and thereby saved thousands of dollars of useless expense—but it did not bring the two kinds of Courts any closer or give the one any foothold in the territory of the other. Most lawyers will give a prominent place in the history of law to the Administration of Justice Act passed in 1873, Sir Oliver Mowat being responsible for it. That for the first time gave to a defendant who had a perfectly good defence to an action, but not a "Common Law defence," to set it up in a Common Law action. An illustration will assist to give some idea of the value of the provision—and an actual case will be given.

Haig vs. Gordon.

In my youth, there lived nearby a family by the name of Lindsay, on a valuable farm in the First Concession of the Township of Hamilton-in 1860, the land was sold to Andrew Haig, and the Lindsays went to Michigan. Lindsay died and Haig was soon shocked by finding himself served with a writ claiming dower in the land, by a woman of the name of Gordon, residing at Port Hope. It turned out that the so-called "Lindsay" was really a man by the name of Gordon who left Liverpool, England, with the woman with whom he afterwards lived as man and wife on the farm, with their children, assuming the name of Lindsay. He had left a wife behind him. She came out to Canada and lived at Port Hope, some three miles away from the farm. She arranged with her husband to keep secret their relationship, and allowed him to live with his putative wife without disturbance: on that arrangement she and her children received their support from Mr. and Mrs. "Lindsay." When Lindsay died, his real wife, Mrs. Gordon, sued for her dower in the land. By the law she was entitled to dower, her husband had been the legal owner of the farm and he was dead-no help could Haig obtain from the Court of Common Law. But the law says that when any person so acts as to induce another to believe in a state of facts which does not exist and that other acts in that belief, the first cannot be allowed to set up the true state of facts to his own advantage and the prejudice of the other. Mrs. Gordon had so acted as to make Haig believe that Mrs. Lindsay was the wife of the owner of the land, and consequently she should be estopped—as the technical expression runs—from setting up that she herself was his wife. Besides it was established that Gordon had had no money of his own—he had been Mrs. Lindsay's coachman-that all the money paid for the farm when it was bought was Mrs. Lindsay's and Mrs. Lindsay had joined in the deed to Haig. All this was of no avail in a Court of Law-the land was in the name of the man; and at law, his real wife was entitled to dower out of it. But Equity says that where a woman pays all the purchase money for land and the deed is taken in another person's name, the woman is really the owner of the land and there should be no dower.

Haig went to Mr. John D. Armour, then in practice at Cobourg—afterwards well known as Chief Justice Armour—and he applied to the Court of Chancery and obtained an order that Mrs. Gordon should not proceed with her action at law.

The Administration of Justice Act of 1873 did away with the necessity of applying to the Court of Chancery at all: it enabled a defendant to set up in a Common Law Court all the defences open to him in the Court of Chancery. Other troublesome and technical matters were straightened out and the Courts were made as far as possible auxiliary to each other for the more speedy, convenient and inexpensive administration of justice in every case.

Union of all Superior Courts in 1881

The anomaly of having different Courts with different practice and different rules of decision was at length terminated by Sir Oliver Mowat's Judicature Act of 1881, which consolidated the Courts into one and gave the new Court one rule of decision. The practice has been simplified and the powers of amendment have been so extended that now it requires some ingenuity in a lawyer to prevent his client receiving his just due, irrespective of technicality and form. The Courts cannot and do not claim perfection, human nature is fallible, nothing human is perfect, not even law; moreover Courts must follow general rules and all general rules will work injustice in some instances—but it can be said with confidence, that it must be an extraordinary case in which a litigant does not obtain his rights according to the law and the proved facts.

The Lady Lawyer

For nearly a century the Law Society of Upper Canada was not asked to admit any but those of the male sex; but in 1891, Miss Clara Brett Martin applied to be admitted on its rolls as a student. The Acts of 1797 and 1822 were found not to permit of this being done, but legislation was passed at the instance of Sir Oliver Mowat which got over the difficulty-in 1897 Miss Martin became a Solicitor and also a Barrister; and now the profession in both its branches is open to women on the same terms as to men. The profession of law does not seem to have the same attraction for women as that of medicine; the number of lady Barristers is not large and it is not rapidly increasing. It was said in an article in an English journal on "Women as Practitioners of Law," "The remainder of the Bar (in Ontario), were slow to accept woman as a lawyer; where she has made her appearance, the Bar seems to have gone through the stages of amused curiosity. turning to real and well founded respect—no doubt the conservative part of the profession will always look upon the woman-lawyer as unladylike, unwomanly, recreant to her natural position, overturning the laws of God, what not? That is inevitable: but the great body of the profession is beginning-has, indeed, progressed some distance on the way-to treat her as a desirable and useful part of the profession and of the body politic. While there are exceptions, the rule is that women in Ontario do not take trial briefs: they mainly confine themselves to chamber practice."

The Law Society of Upper Canada at Present

The organization of the profession has been more than once spoken of—the present is the product of a course of evolution, changes being made from time to time. In essence it is that the profession is itself charged with the duty of providing properly educated practitioners and of supervising the conduct of its members.

Every five years the Barristers of Ontario ballot for a number of "Benchers" or Governors—these with certain Benchers ex-officio constitute a Governing Board or Senate—"Convocation" is the technical name—which perscribes the curriculum for all students—it has built and maintains a Law School—for long at a serious loss—it appoints the Lecturers and Examiners and gives a Certificate of Fitness to the student desiring to become a Solicitor and it "Calls to the Bar" him who desires to become a Barrister. It supports a large library for the profession (more than almost any other, the lawyer is dependent upon his books)—it disciplines its members on occasion and furnishes all with Reports of the cases decided by the Courts. The system is essentially one of Home Rule and has worked admirably—so much so, indeed, that upon it have been modeled similar systems for other professions, Medicine, Dentistry, Pharmacy. Other professions have not yet been granted the like Home Rule, but those who have it, have proved its value.

The country has the right to know how far the placing of government education of the lawyers in their own hands has proved successful.

Perhaps it may not be out of place to remind all concerned that the Law Society is a self-supporting body; it asks and receives no aid from the Government and takes up no collection from the people: for a century and a quarter it has been wholly supported by contributions from its own members.

The Osgoode Hall Law School

The experiment was tried many years ago to have lectures given by Professors of the University; and most distinguished lawyers were appointed to the chairs. That proved wholly unsatisfactory, and other plans were tried and abandoned. The Law Society tried to induce the Universities to take the matter up again,

and to give the necessary education to the Students-at-Law. The Universities declined: no fault, perhaps, should be found with this refusal, res angusta domi is always a valid excuse.

It was only when it was found impossible to have education provided in that way that the Law Society took its own money (paid in by practising lawyers), built a Law School building on land paid for by the Law Society, and established a Law School wholly supported by the lawyers themselves. Nay more—for years, the Law Society conducted the school at a heavy loss; an example of altruism without many parallels, the members of a profession paying for the education of students who were to become their own active competitors.

That is not, however, of very great importance. The chief concern of the people of this Province in legal education is the continued supply of men competent to protect their rights. In the past there never was any suggestion from any responsible quarter that the members of the Bar in this Province were not perfectly qualified in that respect—Goldwin Smith, indeed, more than once attacked the Toronto Bar as too subservient to the Bench!—probably the very last imputation that would occur to one at all acquainted with the Courts and the Bar.

I will probably not be charged with any prejudice in favour of the Osgoode Hall Law School: I opposed its erection; I received no part of my education in it; I have had no connection with it except by giving a few addresses outside of the curriculum; but that it is a great success cannot be doubted. I am almost every day hearing graduates of the School present the case of their clients, and I say without hesitation that they measure up well beside the older Bar. The Bar of Ontario is not degenerating; and no one with any extensive acquaintance with the Bars of the several States of the Union will consider as anything else than absurd, the suggestion that it is inferior to that of any State. Let any one ask a citizen of any State of the Union who has had experience of members of both Bars, his opinion of the relative merits of the Bar of his State and of the Bar of Ontario.

Connection With Universities

Recently there has been some talk of a closer connection between the Law Society and the Universities—lawyers should undoubtedly be thoroughly educated with the widest possible liberal education: it is perhaps a consummation to be wished for that the young man or young woman, before entering law should have an Arts degree. The Law Society now offers a premium to such by reducing the term of service from five years to three. There are many subjects which are properly University and not Law School subjects, which are taught in the great Law Schools of the United States, Harvard, Yale, North Western, etc.: this accounts for the numerous chairs in these University Law Schools and their apparent greatness as compared with Osgoode Hall. The University of Toronto takes up some of these subjects; there is no reason (except want of means), why it does not take up them all. Students attend the great Law Schools across the line who intend to go into public life, diplomacy and the like: the Law School at Osgoode Hall is a purely professional School where men and women learn to practise law; and for a university to suppose that it can offer a better course or give a better education on professional subjects savours of absurdity.

It is sometimes urged that as medicine has been benefited by its association with universities—and that such is the fact is undoubted—so law would be. Indeed it is said that "legal knowledge is not progressing as medical knowledge has done"—but those who say this do not distinguish between the quality of medical knowledge and that of legal knowledge. The advance of medical knowledge means advance in the knowledge of existing facts of nature: the sloughing off of the old theories which were based upon a wrong view of fact, microscopic in-

vestigation and experiment, study of environment and accurate differentiation, all go to the advance of medical knowledge; and that advance consists in large measure of forgetfulness of the old knowledge, or what was formerly considered knowledge. There is nothing of the kind in legal knowledge—it is for the legislator to say what the law should be, the lawyer must obey. The sociologist investigates the facts of life and advises this or that change in legislation—the lawyer can only find what the law is, there is no room for the microscope or the experiment. In determining what the law is, the lawyer cannot, like the medical man, throw away the old, he is bound by it. A text book twenty years old is generally useless, if not harmful, to the medical man; text books of Queen Elizabeth's time are still of use to the lawyer; law is a man-made thing, medicine is not; law is one thing in Canada, another in France, while smallpox and the mumps are alike everywhere.

Advance in legal knowledge means and can mean nothing else than a more accurate and extended knowledge of what was considered law in the more or less remote past, and while such knowledge may be of some use (I have yet to learn of any knowledge which may not be of some use to lawyers at some time, for we range from chemistry to theology), the use is infinitesimal.

All this is argument, the proof of the pudding is in the eating, results are what count and it is certain that the Law Schools controlled by or associated with universities do not turn out men better equipped for the practice of law than the School at Osgoode Hall. No scheme of change so far suggested possesses any merits from the point of view of the public service. Nevertheless I am wholly convinced that in time the Law Society and the University must unite in establishing in Toronto a great College of Law with a wide range of subjects, thoroughly taught theoretically, and, where possible, also practically.

Barristers and Solicitors

The two branches of the profession are still distinct, the Barrister and the Solicitor; the name Attorney disappeared in 1881 and "Solicitor" was adopted to designate all in the "lower branch of the profession," following the legislation in England where the word "Attorney" had acquired an unpleasant connection which "Solicitor" had escaped, although the Solicitor's Court, the Court of Chancery, had distinctly the worst reputation of all the Courts in England.

The Barristers are King's Counsel who have the right of pre-audience and sit on the front row of benches "within the Bar," and those of the Outer Bar or stuffgownsmen, who sit "without the Bar." In England there were formerly Serjeants-at-Law but we never had that degree or dignity in Canada. King's Counsel wear in Court a black coat and waistcoat of a peculiar cut, dating back to Queen Anne's time, white linen and white bands—they also have a silk gown of a particular form. All Judges now wear this costume whether they ever were King's Counsel or not. Stuff-gownsmen wear a black coat and waistcoat (of any cut but the K. C.'s kind), white linen and white bands or tie. Their gown is of stuff. The Court may, and generally does, refuse to hear a Barrister unless he is properly "clothed." The curious little tag on the shoulder of the stuff gown is all that is left of the hood which used to be worn with the gown, down the back, into which the client dropped the fee. In England Barristers cannot sue for fees: the money paid to Barristers is supposed to be a Honorarium whence arose the salutary practice of paying Barristers' fees in advance. By the construction placed upon a certain tariff our Courts have held that Barristers in this Province may now sue for their fees.

The Solicitor may dress as he pleases or as he can afford: but he is not heard in Court.

The different kinds of bag to be carried are now of little importance: most practitioners carry a leather or "near-leather" bag—the "Brief Bag" as it is often called. But until a few years ago the lawyer was known by the bag he carried—the law student and the Attorney or Solicitor carried a black bag, the Outer Barrister, a blue bag, the Queen's Counsel a red bag, and the Judge a green bag.

The functions of the Barrister and Solicitor are different, although in Canada most lawyers are both Barrister and Solicitor—differing in that respect from the English practice, where the same person cannot be both Barrister and Solicitor, and the American practice which makes no distinction, generally calling all lawyers, "Attorneys." In this Province, as in England, the Solicitor conducts the routine work of the law-suits, issues the writ, draws the pleading, collects and writes down, "briefs," the evidence: the Barrister advises on the pleadings, i.e., recommends or corrects the form, examines and advises on evidence, suggests what further evidence is necessary, etc.: he takes the "Brief" at the trial, i.e., he conducts the case—the Solicitor, as such, has no right to address the Court at all, but he is generally present to assist Counsel. Often more than one Counsel are in Court for a client, seldom more than two. The Court, whether at the trial or in appeal, will seldom hear more than two Counsel on a side; and in most cases only one on each side does in fact address the Court.

The rules of etiquette are not quite so strictly drawn as in England, largely because of our system of combining in one person the functions of Barrister and Solicitor. Even in matters of a more important character there are differences: for example, in England an Advocate cannot be a witness at a trial—if he intends to give evidence he must abandon his advocacy, while in this Province, although it is a matter for adverse comment and always frowned upon, the Court does not always positively prohibit Counsel from giving evidence.

But, speaking generally, we have the same rules of ethics and almost the same etiquette as prevail in England—and, best of all, the feeling of solidarity of Bench and Bar, the candour and consideration with which the Bar treats the Bench, and the good feeling and mutual respect towards each other—this is the best omen for the future of the profession. Esto perpetua.

CHAPTER VIII.

Perhaps I cannot better close this series of papers than by adding the substance of what I wrote some time ago in answer to a request for information by a person connected with a publishing house.

Changes in the Profession of Law

The profession of Law, like every other, is judged popularly, not only by its present, but also by its past—the opinion of the public does not always keep up with the progress of the profession.

I was called in 1883, just after Sir Oliver Mowat's Judicature Act of 1881 had revolutionized the practice and made it simpler, more effective and less artificial. Since that time great strides have been made in the way of abolishing technicality and giving to the litigant his rights on the facts which are proved, irrespective of the way his lawyer expresses them on paper. Amendments are made at any stage to enable judgment to be given according to the very right of the case—amendments must be so made, for the Rules so direct.

Much of the change has been made possible by the law which brings it about that most cases are tried without a jury: in jury trials, there is always greater strictness in adhering to the written pleadings and the rigid rules of law than in trials without a jury.

This is partly, but by no means wholly, the cause of the revolution in the conduct of cases at the trial in my time. The former ideal of a trial counsel was an eloquent orator who could move a jury to tears and force a verdict even against the facts proven. That is all changed—when a judge tries a case, he does not want to be addressed like a public meeting: but there is another and perhaps, an even more powerful influence, that is, the increasing intelligence of the common jury. Juries have improved immensely during forty years, not only in intelligence, but also in a sense of what is fair and right.

Addresses to the jury are shorter by half, appeal to passion and prejudice is unused, or, at least, camouflaged—juries now require a quiet discussion of fact and not rhodomontade.

The Most Effective Advocates at the Bar.

The two I feared most as antagonists and considered the most dangerous were effective counsel in quite different ways. The late B. B. Osler excelled in extracing, without apparent force, facts favorable to his side and in placing them, quietly but artfully and impressively, before the jury. G. T. Blackstock, while more forceful than Mr. Osler in his treatment of witnesses, was scarcely so successful in obtaining favorable answers: but what he did obtain, he pressed on the jury with tremendous vigour. With neither was a case ever lost until the judgment was entered.

In a Court of Appeal I would sooner meet either, or both, than Sir Allen B. Aylesworth: I have never seen or heard anyone who could marshall facts before an appellate tribunal better and more convincingly than he. It is an infinite pity that physical infirmity has cut short his active career as Counsel.

What Are the Most Important Elements in Professional Success?

First, I would place absolute personal integrity—the lawyer who lies or cheats cannot succeed. The absurd, but rather popular conception of the lawyer as

one who says what is not true, does not induce a client to go to one with the reputation of a liar or cheat and does not induce a judge or jury to believe him. Then, a knowledge of human nature, intellectual honesty (that is, keeping an open mind, and forming an honest judgment without giving way to prejudice or preconceived ideas), human sympathy. An encyclopaedic knowledge of Law, few can have—the field is too wide—but a thorough grounding in elementary principles will carry the lawyer through most difficulties. Law, after all, is in most cases, common sense and common honesty; and for one instance in which the law is doubtful, there are a hundred where only the facts are in dispute.

Education

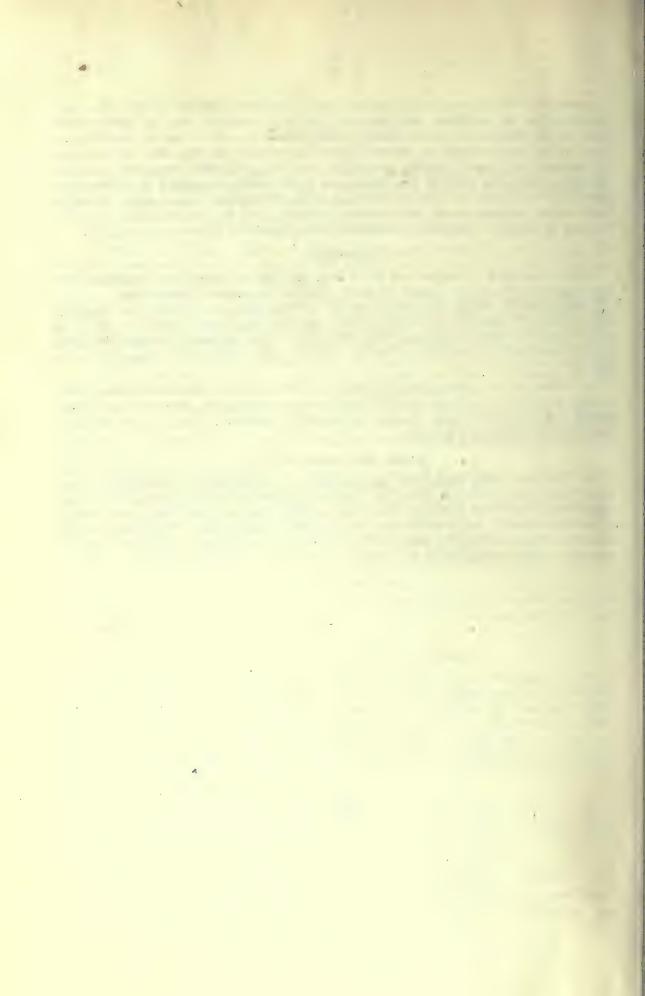
There is nothing a lawyer can know that may not be useful at some time; but the elements of success, spoken of above, suggest a course of education.

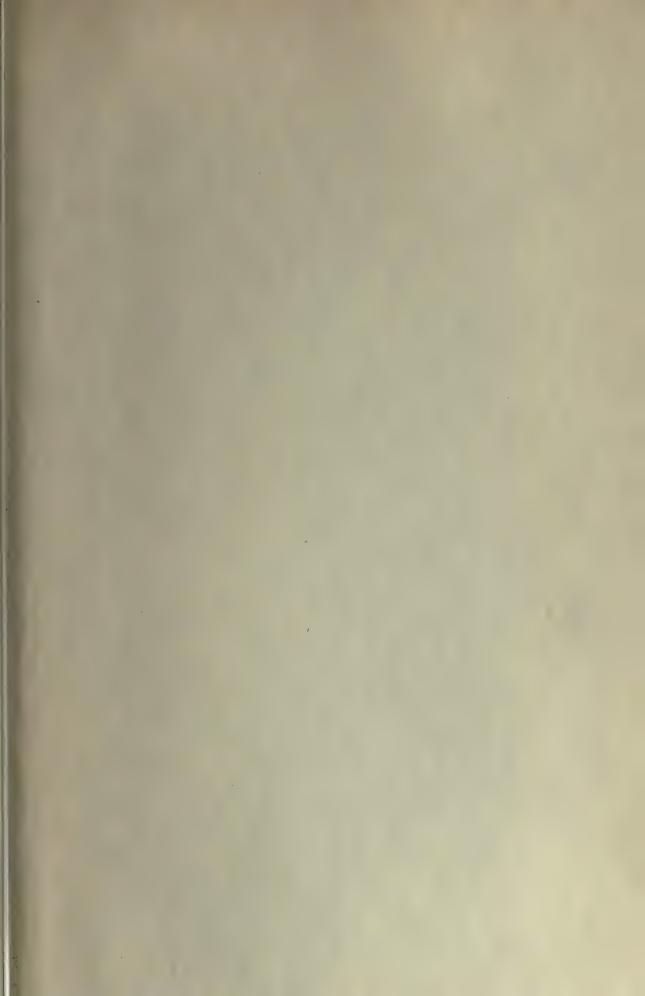
I have known scores of graduates of Universities, and many who had the opportunity of taking a University course but did not avail themselves of it: I have never yet met a graduate who was sorry that he went through the University, nor have I ever met a lawyer who did not graduate who was not sorry for it.

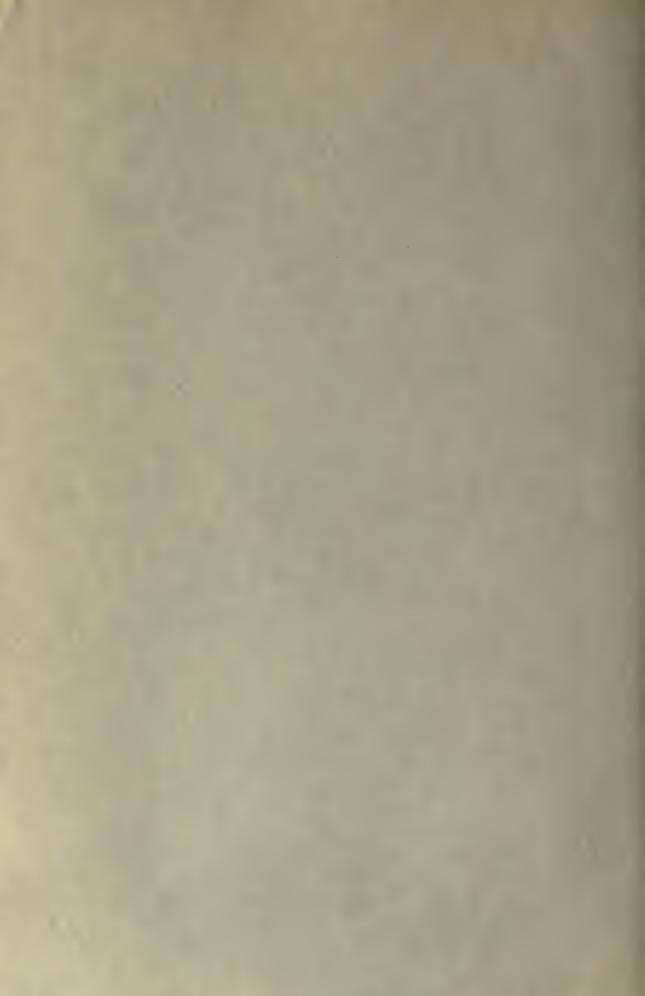
No education will give personal integrity. The Classics with some Moral Philosophy should give all the insight into human nature that education can give: Mathematics and Physical Science (especially Practical Science) give the best training in intellectual honesty.

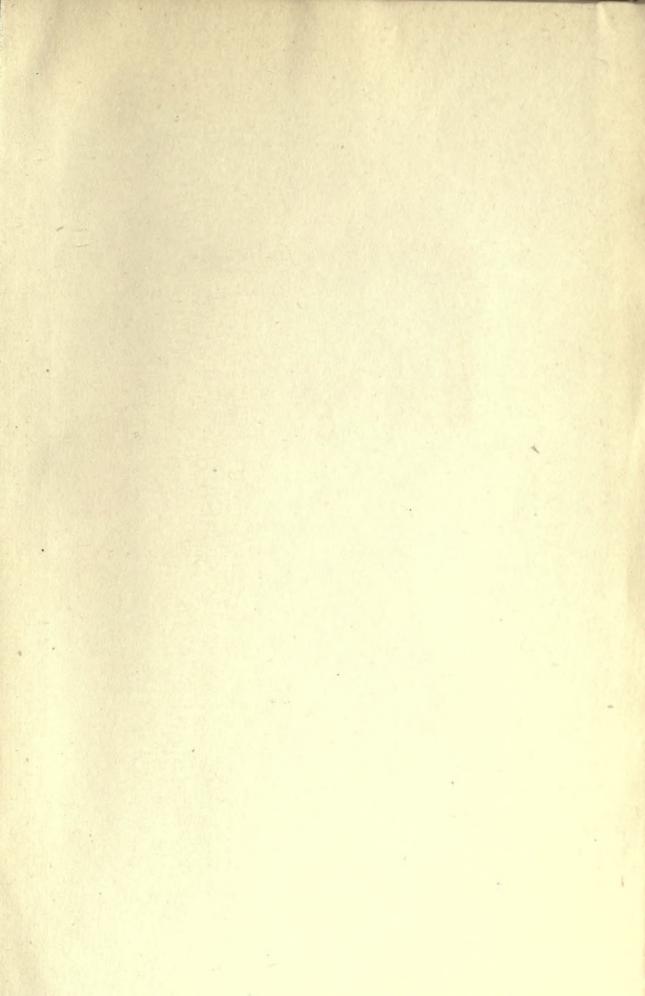
Is the Bar Degenerating?

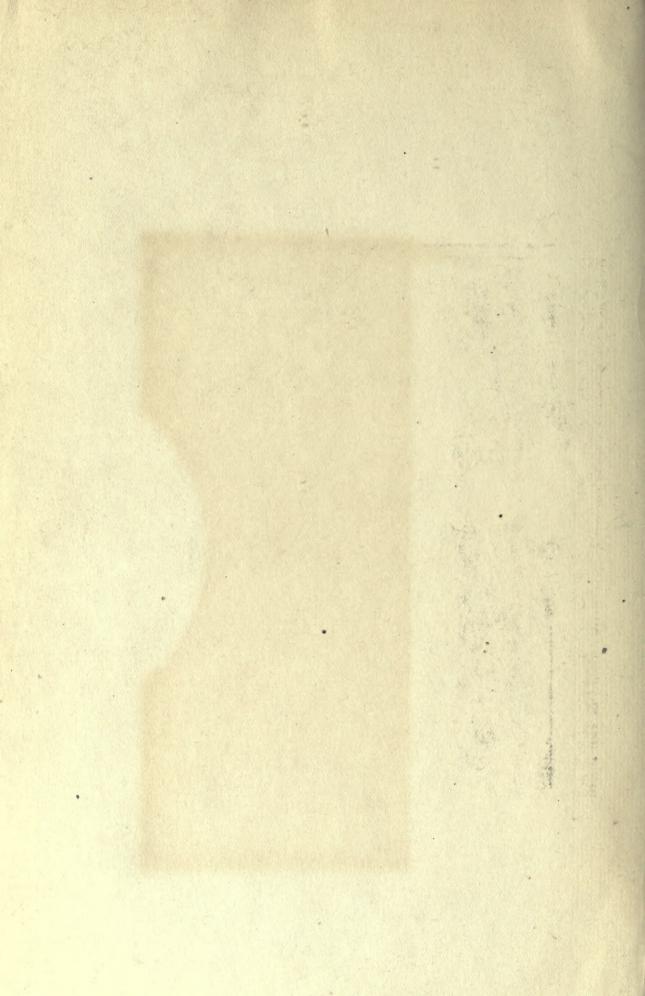
No—we hear every day, from the Junior Bar, as able and as convincing arguments as were ever made, even by those we considered giants in the olden time—less oratory, better rhetoric, less length, more logical consistency, less appeal to outworn theory, more to sound common sense and justice. The leaders of the Bar have not degenerated; and the Bar of Ontario as a whole stands, and rightly stands, as high to-day as it ever did.











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